

WSR 20-19-005
PROPOSED RULES
BATES TECHNICAL COLLEGE

[Filed September 3, 2020, 9:28 a.m.]

Continuance of WSR 20-14-095.

Preproposal statement of inquiry was filed as WSR 20-04-041.

Title of Rule and Other Identifying Information: Amending chapter 495A-121 WAC to align with model student code of conduct and reflect changes in federal law regarding Title IX.

Hearing Location(s): On October 28, 2020, at 10:00 - 11:00 a.m.

Zoom, virtual public hearing. Zoom meeting: <https://batestech.zoom.us/j/97317344653>.

Date of Intended Adoption: December 1, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email below due to COVID-19 working remotely, email jehernandez@batestech.edu, by October 14, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email jehernandez@batestech.edu, by October 14, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to align with model student code of conduct and align with changes in federal law regarding Title IX.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.250, 28B.50.-140(13).

Rule is necessary because of federal law, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, jehernandez@batestech.edu; Implementation and Enforcement: Office of the President, Bates Technical College, kbryson@bates-tech.edu.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally

establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

September 3, 2020

Dr. Jean Hernandez

Special Assistant to the President

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-011 Definitions. The definitions set forth in this section shall apply throughout this chapter. The following words and phrases shall mean:

(1) "Assembly" means any activity engaged in by two or more persons, and the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any persons or group of persons.

(2) "Board of trustees" shall mean the five-member governance board appointed by the governor of the state of Washington for Bates Technical College, District ((No-)) 28.

(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the timeline runs until the next date on which the college is open for business.

(4) "College" shall mean Bates Technical College, District ((No-)) 28.

(5) "College community" means students, employees, trustees, and volunteers.

(6) "College facilities" and "college facility" mean and include any real and personal property owned, rented, leased, or operated by the college, all buildings and appurtenances attached thereto, and all parking lots and other grounds. College facilities extend to distance education classroom environments and agencies or institutions that have educational agreements with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" includes all campuses of the college where located and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "College president" shall mean the chief executive officer of the college appointed by the board of trustees.

(10) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(11) "Conduct review officer" is the college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(12) "Consent" means a person gives knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented

before engaging in the sexual activity. For consent to be valid there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat, intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening, are disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity. An individual has engaged in nonconsensual sexual activity when the individual knows, or should know, that the other person is physically, emotionally, or mentally incapacitated.

(13) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(14) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(15) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. Disciplinary action does not include instructional decisions and actions that are under the authority of faculty members and instructional administrators, such as determination of academic credit and grading. These determinations and any review or appeal of these are outside the scope of this chapter.

(16) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student/faculty disciplinary committee. Appeals of all other disciplinary action that can be appealed is reviewed through brief adjudicative proceedings.

(17) "Employee" means any classified, faculty, administrator, exempt, student worker or volunteer person.

(18) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(19) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email to the specified college official's email address.

Paper required to be filed is deemed filed upon actual receipt during office hours at the office of the specified college official.

(20) "Instructor" and "faculty" mean any employee of Bates Technical College, District ((~~Ne-~~)) 28 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

(21) "RCW" means Revised Code of Washington and can be accessed at <http://apps.leg.wa.gov/rcw/>.

(22) "Respondent" is the student against whom disciplinary action is initiated.

(23) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party is accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed.

(24) "Sexual misconduct" is the definition ascribed to this term in WAC 495A-121-041(14) and chapter 495A-115 WAC.

(25) "Student" includes all persons taking courses at or through the college whether on a full-time or part-time basis and whether such courses are credit courses, noncredit courses, online courses, continuing education, or contract courses. Persons meeting the following criteria are considered students:

(a) Who withdraw after allegedly violating the code;

(b) Who are not officially enrolled for a particular term but have a continuing relationship with the college; or

(c) Who have been notified of their acceptance for admission.

(26) "Student conduct officer" is a college administrator designated by the president to be responsible for investigating allegations of student misconduct and taking disciplinary action based on the prohibited conduct listed in WAC 495A-121-041 and 495A-115-020. The president may reassign any of the student conduct officer's responsibilities under this chapter as deemed appropriate.

(27) "Student organization" means any number of students who meet the college's formal requirements to form a club or organization.

(28) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

(29) "WAC" means the Washington Administrative Code and can be accessed at <http://app.leg.wa.gov/wac/>.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-012 Jurisdiction. Refer to WAC 495A-115-030 for Title IX and sexual harassment jurisdiction as it applies to student conduct procedures relating to sexual harassment and sexual assault.

(1) The student conduct code shall apply to student conduct that occurs:

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities; or

(c) Off campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including:

(a) Foreign or domestic travel;

(b) Activities funded or sponsored by the associated students;

(c) Athletic or recreational events;

- (d) Training internships or cooperative education;
- (e) Distance education or online education;
- (f) Practicums or supervised work experiences;
- (g) Apprenticeship sites; or
- (h) Any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree or certificate, including conduct that may occur before classes begin, after classes end, during the academic year, or during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending.

(4) The college has sole discretion on a case-by-case basis to determine whether this student conduct code applies to conduct that occurs off campus.

(5) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may continue with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-020 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are assured to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are assured the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services that are subject to the limitations of RCW 28B.50.-090 (3)(b).

(c) The college protects students from academic evaluation that is arbitrary, prejudiced, or capricious. Students are responsible for meeting the standards of academic performance established by each instructor.

(d) Students have the right to a learning environment that is free of discrimination, inappropriate and disrespectful conduct, and all harassment including sexual harassment. Chapter 495A-115 WAC describes the college's student conduct procedures for handling Title IX and sexual harassment claims.

(2) Due process.

(a) The college assures the rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-041 Prohibited conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct that includes, but is not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give, or obtain unauthorized assistance related to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own without proper attribution the ideas, writings, or work of another person in completing an academic assignment. Plagiarism also may include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty that include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property.

(4) Assault, intimidation, and harassment. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(5) Bullying is severe or pervasive physical or verbal (written or oral) abuse.

(6) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) Property violation. Damage to, theft, or misuse of real or personal property or money of:

- (a) The college or state;
- (b) Any student, college officer, or employee;
- (c) Any other member of the college community or visitors; or
- (d) Possession of such property or money after it has been stolen.

(8) Failure to comply with a directive from a college officer or employee who is acting in the legitimate performance of their duties or failure to properly identify oneself to said person when requested to do so.

(9) Weapons. The possession, transportation, and use of firearms or other dangerous weapons on campus apparently capable of producing bodily harm is prohibited on the college campus subject to the following exceptions:

- (a) Certified law enforcement officers acting within the scope of their employment;
- (b) Private contracted security with expressed prior written permission from the college to possess firearms or dangerous weapons while employed by the college or for a permitted or contracted event;
- (c) Knives, tools, and other objects that are being used for a legitimate educational purpose as part of a college instructional program;

(d) A student with a valid concealed weapons permit may store a firearm in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(e) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written document.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or involvement in any pastime or amusement with said organization that causes or is likely to cause a student bodily danger, physical harm, and serious mental or emotional harm.

(11) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana regardless of form

including edibles. While state law permits the recreational use of marijuana, federal law prohibits the use on all college premises and in connection with all college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW or any other controlled substance under chapter 69.50 RCW except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. Use of tobacco, electronic cigarettes, smoking devices, and related products on or in any college facility is prohibited. Exceptions include in a designated smoking area or in a closed private vehicle when in compliance with applicable Washington state laws and college policies. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(12) Disorderly conduct. Conduct that:

- (a) Disrupts campus operations or the educational, social, or housing programs; or
- (b) Assisting or encouraging another person to engage in said disruptive behavior.

(13) Discriminatory conduct. Discriminatory conduct that harms or adversely affects any member of the college community or visitor. The misconduct includes, but is not limited to, race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification as defined by the college's nondiscrimination statement.

(14) Sexual misconduct. The term sexual misconduct includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. ~~((The term sexual harassment means unwelcome conduct of a sexual nature that is sufficiently serious as to deny or limit, or that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature or that creates an intimidating, hostile, or offensive environment for other college community members or visitors.))~~ For a description of prohibited conduct under Title IX refer to WAC 495A-115-020.

(b) Sexual intimidation. The term sexual intimidation means threatening or emotionally distressing conduct based on sex and including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

~~((c) Sexual violence. Sexual violence is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, that is without consent or by force by a person upon another person or with any object. Sexual intercourse includes anal or vaginal pene-~~

tration by a penis, tongue, finger, or object and also defined as oral copulation by mouth to genital contact or genital to mouth contact.

(ii) ~~Noneconsensual sexual contact is any intentional sexual touching, however slight, by a person upon another person or with an object that is without consent or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

(iii) ~~Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

(iv) ~~Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.~~

(v) ~~Stalking is intentional and repeated harassment or following another person which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed even if the perpetrator lacks such intent.)~~

(15) Harassment. Unwelcome and offensive verbal, non-verbal, or physical conduct that is directed at a person because of said person's protected status and that is sufficiently serious:

(a) As to deny or limit or that does deny or limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(b) That creates an intimidating, hostile, or offensive environment for other community college members or visitors.

Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See ~~((subsection (14)(a) of this section))~~ WAC 495A-115-020 for the definition of sexual harassment.

(16) Retaliation. Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination ~~((and))~~, harassment, or violations of Title IX as defined in chapter 495A-115 WAC. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(17) Theft or misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of said computer time or resources to interfere with someone else's work;

(e) Use of said computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of said computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of said computer time and resources in violation of applicable copyright or other laws;

(h) Adding to or altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy.

(18) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property or unauthorized entry onto or into college property.

(19) Safety violations. Safety violations include any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation, or college policies or rules, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-043 Classroom conduct. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard without the expressed approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) ~~((from a single class or related activity for the remainder of that day))~~ for up to three days if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct

officer may set conditions for the student that must be followed upon returning to the class or activity.

(4) The suspension of up to one day discussed in subsection (3) of this section shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer or designee shall be processed in accordance with this chapter.

(5) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-044 Disciplinary sanctions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree or certificate, disciplinary sanctions are not made a part of the student's academic record but are part of the student's disciplinary record. Violation of any term or condition of a disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction may include, but is not limited to, a suspension or a dismissal from the college that shall take effect immediately. If the deferred sanction is a suspension in excess of ten days or a dismissal, the student shall have a right to appeal to the student/~~(faculty)~~ faculty disciplinary committee. Other deferred sanctions shall be subject to brief administrative proceedings as described in this chapter.

Any sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action was taken.

(5) Dismissal. The revocation of all rights and privileges of being a student at Bates Technical College and exclusion from all college campuses and college owned or controlled facilities without any possibility of returning. There is no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) Educational sanction. The college may require the student to complete an educational activity or experience directly related to the violation committed at the student's expense.

(7) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to the evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student remains suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(8) Not in good standing. If a student is deemed not in good standing with the college, the student is subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college;

(b) Ineligible to hold an elected or appointed office of the college; and

(c) Ineligible to represent the college to anyone outside the college community in any capacity including representing the college at any official function or any forms of intercollegiate competition or representation.

(9) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

~~(10) ((Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.~~

~~(11))~~ Revocation of admission, degree, or certificate. Admission to or the award of a degree or certificate from the college may be revoked for fraud, misrepresentation, violation of standards of conduct for students in obtaining the degree or certificate, or other serious violations committed by a student prior to graduation.

~~((12))~~ (11) Withholding degree or certificate. The college may withhold awarding a degree or certificate otherwise earned until the completion of the process set forth in this chapter and including the completion of all sanctions imposed.

~~((13))~~ (12) No trespass order. A student may be restricted from college property based on misconduct.

~~((14))~~ (13) No contact order. An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-061 Initiation of disciplinary action.

(1) All disciplinary actions are initiated by the student conduct officer. If the respondent has submitted an active complaint against the student conduct officer, the president shall, upon request, designate another person to fulfill any disciplinary responsibilities relative to the complaint.

(2) ~~For all complaints relating to violations of Title IX or sexual harassment, the college shall follow chapter 495A-115 WAC.~~

(3) ~~For all other disciplinary matters,~~ the student conduct officer initiates disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice briefly describes the factual allegations, the provision(s) of the student conduct code that the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specifies the time and location of the meeting. At the meeting the student conduct officer presents the allegations to the respondent, and the respondent is afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

~~((3) Prior to taking disciplinary action in a case involving sexual misconduct, the student conduct officer will make a reasonable effort to contact the complainant(s):~~

~~(a) To discuss the results of the investigation; and~~

~~(b) If the allegations of sexual misconduct are found to have merit, to discuss the possible disciplinary sanctions or conditions that may be imposed upon the respondent and are for the complainant's protection.))~~

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case including any facts or argument presented by the respondent, the student conduct officer will serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495A-121-044; or

(c) Refer the matter directly to the student/faculty disciplinary committee for disciplinary action as the committee deems appropriate. This referral is in writing, to the attention of the chair of the student/faculty disciplinary committee, and with a copy served on the respondent.

~~((6) In cases involving allegations of sexual misconduct, both the respondent and the complainant will be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal the disciplinary decision. On the same date that a disciplinary decision is served on the respondent, the student conduct officer will serve a written notice informing the complainant~~

~~whether the allegations of sexual misconduct were found to have merit and describe any disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice also informs the complainant of their appeal rights. If protective sanctions or conditions are imposed, the student conduct officer will make a reasonable effort to contact the complainant and ensure prompt notice of the protective disciplinary sanctions or conditions.))~~

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-062 Summary suspension procedures. Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation or formal disciplinary procedure is pending.

(1) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the student conduct code and presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; or

(b) Poses an ongoing threat of substantial disruption of or interference with the operations of the college.

(2) Notice. Any respondent who has been summarily suspended will be served with oral or written notice of the summary suspension. If oral notice is given, a written notification will be served on the respondent within two days of the oral notice.

(3) The written notification is entitled "notice of summary suspension" and includes:

(a) The reasons for imposing the summary suspension including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassing from the college premises, a notice against trespass will be included that warns the respondent that the privilege to enter into or remain on college premises has been withdrawn and that the respondent is considered trespassing and subject to arrest for criminal trespass. The respondent may only enter the college premises for a scheduled meeting with the student conduct officer or conduct review officer or to attend a disciplinary hearing.

(4) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and

whether the summary suspension should be less restrictive in scope.

(b) The respondent is afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision that includes a brief explanation for any decision continuing or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(5) In cases involving allegations of sexual misconduct, the ~~((complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college also will provide the complainant with timely notice of any subsequent changes to the summary suspension order))~~ college shall follow chapter 495A-115 WAC.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-063 Appeals of disciplinary action. For claims involving alleged violations of Title IX or sexual harassment refer to chapter 495A-115 WAC. For other disciplinary actions:

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision is deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal are the respondent and the conduct review officer.

(4) A respondent who appeals a disciplinary action within the ten days of service or whose case is referred to the student/faculty disciplinary committee has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code will be delayed pending appeal, unless the respondent has been summarily suspended.

(7) The student/faculty disciplinary committee shall hear appeals from:

- (a) The imposition of disciplinary suspensions in excess of ten days;
- (b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

~~(10) ((In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

- ~~(a) The dismissal of a sexual misconduct complaint; or~~
- ~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision will be afforded the same procedural rights as are afforded the respondent.~~

~~(13))~~ Brief adjudicative proceedings and the initial hearing shall be conducted by a conduct review officer. The conduct review officer will not participate in any case in which:

- (a) The individual is involved as a complainant or witness;
- (b) There is direct or personal interest, prejudice, or bias; or
- (c) The conduct review officer has taken previous actions in an advisory capacity.

~~((14))~~ (11) The parties to a brief adjudicative proceeding are the respondent~~((;))~~ and the college, represented by the student conduct officer~~((, and the complainant in cases involving sexual misconduct))~~. Before taking action, the conduct review officer will conduct an informal hearing and provide ~~((each))~~ the party:

- (a) An opportunity to be informed of the college's view of the matter; and
- (b) An opportunity to explain the party's view of the matter.

~~((15))~~ (12) The conduct review officer will service an initial decision upon both the respondent and the student conduct officer within ten days of the completion of the informal hearing. The initial decision contains a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the

initial decision, the initial decision is deemed the final decision.

~~((16))~~ In cases involving allegations of sexual misconduct, the conduct review officer on the same date as the initial decision is served on the respondent will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection. The notice also will inform the complainant of their appeal rights.

((17)) (13) If upon review the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

~~((18))~~ (14) An initial decision from the brief adjudicative proceeding is subject to review by the president provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

~~((19))~~ (15) The president will not participate in any case in which:

- (a) They were involved as a complainant or witness;
- (b) There is direct or personal interest, prejudice or bias; or
- (c) Previous actions have been taken in an advisory capacity.

~~((20))~~ (16) During the review, the president will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the ~~((student conduct))~~ student/faculty disciplinary committee for a formal adjudicative hearing.

~~((21))~~ (17) The decision on review must be in writing, must include a brief statement of the reason for the decision, and must be served on the parties within twenty calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. If the president does not make a disposition of the matter within twenty calendar days after the request is submitted, a request for review is deemed denied.

~~((22))~~ (18) If upon review the president determines that the imposed sanctions are insufficient and that the respondent's conduct may warrant imposition of a heightened disciplinary suspension of more than ten days or dismissal, the matter will be referred to the student/faculty disciplinary committee for a disciplinary hearing.

~~((23))~~ In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent will serve written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing the disciplinary sanctions and conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice also will inform the complainant of their appeal rights.)

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-065 Procedural guidelines of the student/faculty disciplinary committee. In addition to this chapter, the student/faculty disciplinary committee shall follow WAC 495A-115-050 through 495A-115-080 when handling allegations of Title IX and sexual harassment violations. For other disciplinary actions:

(1) Proceedings of the student/faculty disciplinary committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student/faculty disciplinary committee chair will serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences or to make prehearing decisions concerning the extent and form of the discovery, issuance of protective decisions, and similar procedural matters.

(4) A request filed at least five days before the hearing by a party or at the direction of the committee chair will result in the parties exchanging no later than the third day prior to the hearing the lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in the requested exchange may be cause for exclusion from the hearing of the witness or exhibit not disclosed, absent a showing of good cause for the failure.

(5) In advance of the hearing the committee chair may provide to the committee copies of:

(a) The conduct officer's notification of the imposition of discipline or referral to the committee; and

(b) The notice of appeal or response to the referral by the respondent. If doing so, the chair should remind the members that these pleadings are not evidence of any facts they may allege.

(6) Before the hearing the parties may agree to designate specific exhibits as admissible without objection and whether the committee chair may provide copies of these admissible exhibits to the committee members in advance of the hearing.

(7) Upon request the student conduct officer will provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) With the exception of procedural communications that are necessary to maintain an orderly process, communications between committee members and other hearing participants regarding issues in the proceeding are generally prohibited without notice and opportunity for all parties to participate, and improper "ex parte" communication will be placed on the record as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent or complainant may elect to be represented by an attorney at their own cost and will be deemed to have waived that right unless at least four days before the hearing written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee is ordinarily advised by an assistant attorney gen-

eral. If the respondent or the complainant is represented by an attorney, the student conduct officer also may be represented by a second assistant attorney general.

(10) Upon the failure of any party to attend or participate in a hearing the student/faculty disciplinary committee may:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(11) The hearing ordinarily is closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair will determine the extent to which the hearing is open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(12) The chair shall cause the hearing to be recorded by a method the chair selects in accordance with RCW 34.05.-449. The recording or a copy will be made available to the party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476 that also shall be available upon request for inspection and copying by the party. Other recording also shall be permitted in accordance with WAC 10-08-190.

(13) The chair shall preside at the hearing and decide procedural questions that arise during the hearing except as overridden by majority vote of the committee.

(14) The student conduct officer will present the case for imposing disciplinary sanctions unless represented by an assistant attorney general.

(15) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(16) ~~((In cases involving allegations of sexual misconduct no party can directly question or cross examine one another. Attorneys for the parties also are prohibited from questioning the opposing party absent expressed permission from the committee chair. Subject to this exception, all cross-examination questions will be directed to the committee chair who in their discretion will pose the questions on the party's behalf.~~

(17)) At the conclusion of the hearing the student/faculty disciplinary committee shall permit the parties to make closing argument, and the committee will determine the form to be used. The committee also may permit each party to propose findings, conclusions, or a proposed decision for its consideration.

((18)) (17) Within thirty calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision will include findings on all material issues of fact, conclusions on all material issues of law, and provisions of the student conduct code that were violated. Those findings based substantially on the credibility of evidence or the demeanor of witnesses will be identified.

((19)) (18) The committee's initial decision will include a determination on appropriate discipline, if deemed appropriate. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or condition(s), as authorized

in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) or condition(s) imposed by the student conduct officer or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

((20)) (19) The committee's initial decision also will include a statement of the available procedures and time frames for seeking reconsideration or appeal.

((21)) (20) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair also will promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

~~((22) In cases involving allegations of sexual misconduct, on the same date as the initial decision is served on the respondent the chair of the student/faculty disciplinary committee will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student/faculty disciplinary committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice also will inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-066 Appeal of the student/faculty disciplinary committee's decision. For claims involving student misconduct that alleges Title IX or sexual harassment violations refer to WAC 495A-115-080 for the appeal procedure. For other disciplinary claims:

(1) A respondent who is aggrieved by the findings or conclusions issued by the student/faculty disciplinary committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right, and the initial decision is deemed final.

(2) The written notice of appeal must identify the specific findings of fact and conclusions of law in the initial decision that are challenged and must contain arguments why the appeal should be granted. The president's review is restricted to the hearing record made before the student/faculty disciplinary committee and normally limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefings from the parties on issues raised on appeal.

(3) The president will provide a written decision to the respondent and the student conduct officer within thirty calendar days after receipt of the notice of appeal. The president's decision is final and includes a notice of the rights to request reconsideration or judicial review.

(4) ~~((In cases involving allegations of sexual misconduct, on the same date that the final decision is served on the respondent the president will serve a written notice informing the complainant of the final decision. This notice informs the~~

~~complainant whether the allegations of sexual misconduct were found to have merit and describe the disciplinary sanctions or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.~~

~~(5))~~ The president has discretion to suspend the disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

~~((6))~~ (5) Per RCW 34.05.455 the president shall not engage in improper "ex parte" communication with the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-091 Student ((complaints)) grievances. ~~((Complaints))~~ Grievances should be filed as soon as possible and no more than thirty days after the incident occurs. For matters relating to sexual harassment, the college shall follow chapter 495A-115 WAC.

(1) Step one. The student shall first schedule an informal meeting with the instructor or staff member to resolve the concern(s).

If an informal meeting does not resolve the concern(s), within ten working days from the time of the informal meeting, the student may present the grievance in writing to the instructor or staff member involved with a copy sent to the area administrator of student services. Within ten working days after receiving the grievance, the instructor or staff member shall respond to the grievance in writing.

(2) Step two. If the grievance is not resolved at step one, the student may within ten working days of the receipt of the written response, appeal to the area administrator by submitting the appropriate copy of the grievance form and all documents from step one to the area administrator.

(a) The area administrator shall hear the grievance within ten working days after receipt of the grievance form and shall render a decision in writing within ten working days after such hearing.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts as they relate to the issues raised by the grievance.

(3) Step three. If the grievance is not resolved at step two, the student may within ten working days of receipt of the written response, provide the appropriate copy of the student grievance form and a written appeal, accompanied by documents and correspondence, to the senior administrator of student services.

(a) The senior administrator of student services shall hear the grievance within ten working days after receipt of the written appeal and shall render a decision in writing within ten working days after such hearing concludes.

(b) The student will be afforded an adequate and fair opportunity to fully present their position and the relevant facts and issues to be addressed in the grievance.

(c) The decision of the senior administrator of student services shall be final and binding on all parties involved in the grievance.

(d) Any settlement of the grievance shall be applicable to that grievance only and shall not be a precedent or have bind-

ing effect or disposition on any other grievances of similar nature.

AMENDATORY SECTION (Amending WSR 19-14-073, filed 6/30/19, effective 7/31/19)

WAC 495A-121-093 Time limits on filing a ((complaint)) grievance. The student must file a ~~((complaint))~~ grievance within one quarter of the event, which caused the grievance to be filed. The senior administrator of student services may suspend this rule under exceptional circumstances such as extended illness~~((s))~~ or a leave of absence. No complaints will be considered after two quarters of the occurrence of the source of the grievance. When either party to the ~~((complaint))~~ grievance is no longer present at the college and does not expect to return, the senior administrator of student services will give the absent party reasonable opportunity to reply to the ~~((complaint))~~ grievance before making a decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-121-024	Campus speakers.
WAC 495A-121-046	Groups and organizations.
WAC 495A-121-047	Refunds and access.
WAC 495A-121-048	Readmission after suspension or expulsion.
WAC 495A-121-049	Reestablishment of performance standing.
WAC 495A-121-090	Student grievance procedure.

WSR 20-19-007

PROPOSED RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed September 3, 2020, 12:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-026; proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); and proposal is exempt under RCW 19.85.061.

Title of Rule and Other Identifying Information: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30026-30579; 34 C.F.R. 106). The new regulations address the grievance process for allegations of sexual harassment. An Emergency Rule was filed on August 14, 2020, repealing chapter 495B-305 WAC.

Hearing Location(s): On October 27, 2020, at 11:00 a.m., at Bellingham Technical College (BTC), College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Join Zoom meeting: <https://btc-tech.zoom.us/j/92859208664>. Meeting ID: 928 5920 8664.

One tap mobile: +12532158782,,92859208664# US (Tacoma), +13462487799,,92859208664# US (Houston).

Dial by your location: +1 253 215 8782 US (Tacoma).

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by October 31, 2020.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by October 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All public educational institutions receiving federal funding must comply with the United States Department of Education's recently adopted Title IX regulations, which took effect on August 14, 2020. Chapter 495B-305 WAC relates to the grievance procedure when there is an allegation of discrimination or harassment. In its current form it conflicts with the new Title IX regulations, and is not required to be in the WAC. BTC proposes repealing the entire section, and has made its grievance procedure an internal policy/procedure, updated to comply with the new Title IX regulations.

Reasons Supporting Proposal: The grievance procedure outlined in chapter 395B-305 WAC is not required to be in the WAC. In order to comply with the new Title IX regulations, it must be updated. BTC has developed an internal grievance procedure/policy that complies with the new Title IX regulations.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130.

Statute Being Implemented: 85 F.R. 30026-30579; 34 C.F.R. 106.

Rule is necessary because of federal law, [no information supplied by agency.]

Name of Proponent: BTC, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs imposed with the amendments to these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information supplied by agency.]

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions, if necessary: Chapter 495B-305 WAC is repealed in response to legislative directive 85 F.R. 30026-30579; 34 C.F.R. 106.

September 3, 2020

Ronda Laughlin
Executive Assistant
to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495B-305-010 Preamble.
- WAC 495B-305-020 Definitions.
- WAC 495B-305-030 Who may file a complaint.
- WAC 495B-305-040 Confidentiality and right to privacy.
- WAC 495B-305-050 Investigation procedure.
- WAC 495B-305-060 Publication of antidiscrimination policies and procedures.
- WAC 495B-305-070 Limits to authority.
- WAC 495B-305-080 Nonretaliation, intimidation, and coercion.
- WAC 495B-305-090 Criminal complaints.
- WAC 495B-305-100 Other discrimination complaint options.

WSR 20-19-022

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed September 4, 2020, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-150.

Title of Rule and Other Identifying Information: The state board of education (SBE) has proposed amendments to chapter 180-16 WAC regarding state support of public schools. SBE is responding to emergent COVID-19 issues in the education system with this rule making on instructional hours, the school day, and basic education compliance reporting. The purpose of this rule making on chapter 180-16 WAC is to enable local education agencies to deliver instructional hours and school days during state and local public health response that could limit the ability to hold in-person instruction during the 2020-21 school year and other rule changes as necessary. The subject of rule making is to allow modalities other than in-person delivery of instruction to count as instructional hours for the 2020-21 school year.

Hearing Location(s): On October 28, 2020, at 1:00 p.m. Online using Zoom at <https://zoom.us/j/92436066608>. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://zoom.us/j/92436066608>; and at the Brouillet Room, Fourth Floor, Old Capitol, 600 Washington Street S.E., Olympia, WA 98504. This will be the site for the in-person hearing. The presiding officer of the hearing will follow

applicable state, local, and building health requirements regarding COVID-19 at the time of the hearing.

Date of Intended Adoption: November 5, 2020.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by October 28, 2020.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by October 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBE is responding to emergent COVID-19 issues in the education system with clarifications on counting modalities of instruction other than in-person instruction as instructional hours during the 2020-21 school year. SBE proposes changes to chapter 180-16 WAC to align rule to current policy or practice, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

These proposed permanent rules were filed as emergency rules that went into effect immediately on July 22, 2020.

The following proposed rules are applicable to the 2020-21 school year.

- Local education agencies shall submit a copy of the reopening schools plan to SBE and superintendent of public instruction (OSPI) two weeks before school begins and no later than September 15, 2020.
- "Instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count instructional hours towards the minimum district-wide annual average those hours of educational activity planned by and under the supervision of school district staff that are delivered through learning modalities that include but are not limited to distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic.
- The allowance to count instructional hours through modalities other than in-person instruction does not preclude local education agencies from applicable funding allocation requirements as required by the legislature or OSPI; and
- Days in which instructional hours are offered to all students under this allowance shall count as school days for the purpose of meeting the minimum one hundred eighty day school year requirement;
- Local education agencies must implement a system to track student engagement, consistent with OSPI attendance rules, in instructional activities delivered through remote learning modalities; and,
- SBE will revisit this rule no later than its regularly scheduled July 2021 board meeting.

Reasons Supporting Proposal: RCW 28A.150.220(7) states that SBE shall adopt rules to implement and ensure compliance with program requirements of basic education. Due to the dynamic nature of the COVID-19 epidemic, local

education agencies need to be responsive to state and local public health measures such as social distancing, school closures, limiting capacity of buildings, and other suggested ways of limiting community spread of COVID-19. To ensure that basic education can be delivered during the emergency state and local public health response to COVID-19, SBE is proposing rule making that clarifies that districts can count modalities of delivering instruction other than in-person delivery as instructional hours for the 2020-21 school year. The proposed permanent rules are in effect as emergency rules and this proposal is to make permanent rule as necessary.

Statutory Authority for Adoption: RCW 28A.150.220(7).

Statute Being Implemented: RCW 28A.150.220(7).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

September 4, 2020
Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form distributed by the state board of education. The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020. The form shall be submitted electronically and signed by:

(a) The school board president or chairperson, and

(b) The superintendent of the school district.

(2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site visits of selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) **Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.**

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board.

(d) Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, may recommend withholding of funds or may enter into a compliance agreement

with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the non-compliance(s).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline may result, at the state board of education's or its designee's discretion, in the recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section or completion of the compliance agreement.

(4) The provisions of subsection (3) (g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-16-200 Total instructional hour requirement. (1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW 28A.150.315.

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

(4) For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours of educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:

(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;

(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;

(c) Local education agencies must implement a system consistent with OSPI attendance rules; and

(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

WSR 20-19-031

PROPOSED RULES

COLUMBIA BASIN COLLEGE

[Filed September 8, 2020, 4:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-016.

Title of Rule and Other Identifying Information: Proposed rule making is needed for the following chapters: Repealing chapter 132S-09 WAC, Nondiscrimination and harassment policy and grievance procedure; new chapter 132S-110 WAC, Title IX student conduct procedures; and amending chapter 132S-100 WAC, Student code of conduct; chapter 132S-300 WAC, Campus parking and traffic regulations; chapter 132S-05 WAC, Administration; chapter 132S-10 WAC, Public records; chapter 132S-90 WAC, Student rights, responsibilities and student status; and chapter 132S-91 WAC, Loss of eligibility.

Hearing Location(s): On October 28, 2020, at 5:00 p.m., via Zoom <https://columbiabasin.zoom.us/j/96044631682?pwd=VUgrVGdDUnAyVVZQaWkyUm5COUpyZz09>. Meeting ID: 960 4463 1682. Password: 887749.

Please contact Lucas DeLuca, director for disability services, at 509-542-4412 as soon as possible to request any accommodations related to a disability. We need advance time to make arrangements.

Date of Intended Adoption: October 30, 2020.

Submit Written Comments to: Camilla Glatt, 2600 North 20th Avenue, MS-A2, email cglatt@columbiabasin.edu, fax 509-544-2029, 509-542-5548, by October 27, 2020.

Assistance for Persons with Disabilities: Contact Lucas DeLuca, phone 509-542-4412, fax 509-544-2032, Washington relay service 711 or 800-833-6384, email ldeluca@columbiabasin.edu, by October 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Columbia Basin College is proposing repealing chapter 132S-09 WAC, Nondiscrimination and harassment policy and grievance procedure; and amending chapters 132S-100 WAC, Student code of conduct and 132S-300 WAC, Campus parking and traffic regulations. Additionally, the college is proposing amending various sections of the college's rules to address gender-specific references with replacement throughout with gender-neutral alternatives. Additionally, On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020. As an emergency filing of the new chapter 132S-110 WAC, Title IX student conduct procedures, requires permanent rule making within one hundred twenty days of the filing, this new WAC is included.

Reasons Supporting Proposal: Proposed rule making is needed to provide clarity to the processes for the student conduct code. Other amendments are needed to establish rules for parking and traffic regulations, along with minimal amendments to various sections to eliminate gender-specific references with gender-neutral alternatives. The nondiscrimination and harassment policy and grievance procedure is proposed for repeal on the basis it is captured in a college operations policy and is subject to regular updates based on the department of education requirements with the college's formulation of policies process more suitable for those changes. Additionally, new federal regulations required amendments to the Title IX regulations.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-5548.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i).

Explanation of exemptions: Revisions impact college-specific internal policies.

September 8, 2020

Camilla Glatt

Vice President for Human Resources and Legal Affairs

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-05-025 Service of process. To protect the interests of Columbia Basin College employees, all process servers (those attempting to deliver summonses, subpoenas, etc.) to employees should be directed to the human resources office on the Pasco campus. When the process server comes to the human resources office, (~~he or she~~) they should be connected with the person to whom the papers are being served, if that person can be immediately located and is not instructing a class or performing other services at the time. If the person served is not immediately located, the papers will be left during usual business hours with the vice president for human resources & legal affairs or his or her executive assistant. If any of the above designees receives the papers from a process server, (~~he or she~~) they will arrange a time and place for the individual being served to receive the legal documents in such a way as to minimize embarrassment and preserve confidentiality.

AMENDATORY SECTION (Amending WSR 17-23-180, filed 11/21/17, effective 12/22/17)

WAC 132S-10-070 Requests for public records. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.

(1) Providing "fullest assistance." Columbia Basin College is charged by statute with adopting rules which provide for how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors, and provide the most timely possible action on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;
 (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) Request clarification from the requestor by telephone or in writing if the request is unclear or does not sufficiently identify the requested records. To the greatest extent possible, the request for clarification will provide a reasonable estimate of the time required to respond to the request if it is not clarified. If the requestor fails to clarify the request, and the entire request is unclear, the public records officer need not respond to it. Otherwise, the public records officer must respond to those portions of the request that are clear. Once clarification is received, the public records officer or designee

may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Protecting rights of others. In the event the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for the other persons to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the college believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the college shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents (~~he or she wishes~~) they wish the college to copy.

(b) The requestor must claim or review the assembled records within thirty days of the college's notification that the records are available for inspection or copying. The college will notify the requestor in writing of this requirement and inform the requestor to contact the college to make arrangements to claim or inspect the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the college may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying by college staff.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if the public records officer reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that Columbia Basin College has completed a diligent search

for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill the obligation to inspect the records or pays the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the college has closed the request.

(10) Later discovered documents. If, after the college has informed the requestor that it has provided all available records, the college becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-90-070 Outstanding financial obligations, withholding of services and informal appeal. (1) Outstanding financial obligations.

The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting those obligations as stated in WAC 132S-90-020(12). Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this regulation, and if necessary to initiate legal action to ensure that collection matters are brought to a timely and satisfactory conclusion.

To the extent permitted by law, in response to a student or former student's failure to pay a debt owed to the college, the college may:

- (a) Initiate collection action;
- (b) Make collections from funds received from or on behalf of a student;
- (c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;
- (d) Refer the matter for discipline under chapter 132S-100 WAC;
- (e) Deny any other provisions or other services, including refunds.

(2) Withholding services for outstanding debts. Upon receipt of a request for services where there is an outstanding debt owed to the college from the requesting person, the college shall notify the student by the most expedient means that the services will not be provided since there is an outstanding debt, and further that until that debt is satisfied, no such services will be provided to the student. The notice shall include a statement that ~~((he or she has))~~ they have a right to an informal appeal before the debt review committee if ~~((he or she))~~ they believe((s)) that no debt is owed. The notice shall state that the request for the informal appeal must be made to the president's office within twenty-one days from the date of notification. The informal appeal request must be in writing and must clearly state error(s) in fact or matter(s) in extenuation or mitigation which justifies the informal appeal. The informal appeal process excludes parking citation appeals heard by the citation review committee (basis for parking citation) or those waived by untimely filing, but includes

appeals before the debt review committee on whether the debt(s) for parking citation(s) are owed.

(3) Appeal of decision to withhold services for outstanding debt(s).

The request may be for an in-person presentation of the appeal before the debt review committee or include a submission of a written appeal for review by the debt review committee.

Upon receipt by the president's office of a timely request for an informal appeal, the president or designee will designate three staff members and/or student(s) to a committee for the purpose of hearing or reviewing the informal appeal, depending on the request. The debt review committee will render a decision in writing within five business days of the hearing or review. If the outstanding debt is found to be owed by the student involved, services shall not be provided until the debt is paid or otherwise resolved. If the outstanding debt, and any resulting action taken under WAC 132S-90-070, is found to be an institutional error, steps will be taken to lift the restriction on services.

If the decision made by the debt review committee is not satisfactory to the student, ~~((he or she))~~ they may file a more formal appeal through the brief adjudicative process in chapter 132S-20 WAC.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-91-010 Loss of eligibility—Student athletic participation. (1) Grounds for ineligibility. Any student found to have violated chapter 69.41 RCW, which prohibits the unlawful sale, delivery or possession of prescription drugs, shall, after hearing, be disqualified from participation in any school-sponsored athletic events or activities.

(2) Initiation of ineligibility proceedings. The dean or designee shall have the authority to request commencement of athletic ineligibility proceedings whenever ~~((he or she has))~~ they have reasonable cause to believe that the student has violated chapter 69.41 RCW or has been advised that the student has been convicted of a crime involving the violation of chapter 69.41 RCW. The notice of the alleged violations and proposed suspension and the opportunity for a hearing shall be given to the student at least ten days before the hearing. A student convicted of violating chapter 69.41 RCW in a separate criminal proceeding may be given by the dean or designee an interim suspension pending final determination of any administrative proceeding held under these rules. Should the student desire not to go forward with the hearing, the disqualification for participation in athletic events or activities shall be imposed as set forth in the notice of hearing to the student.

(3) Ineligibility proceedings. The president of the college or designee shall select a presiding officer who shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The presiding officer shall promptly conduct the hearing and permit the affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, currently RCW 34.05.482 through 34.05.494.

A written decision shall be issued within ten calendar days of the conclusion of the brief adjudicative hearing.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-030 Definitions. Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct related meeting or proceeding. This person cannot be a college employee or witness involved in the case.

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

Board of trustees - The board of trustees of Community College District No. 19, state of Washington.

Bullying - Physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

College - Columbia Basin College, established within Community College District No. 19, state of Washington.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the college, including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of ~~(the)~~ CBC policy including this student code of conduct has occurred towards themselves, another person, a group of people, or college property. Complainant shall mean the same as claimant or other such term(s) meeting this definition as used in other college policies and procedures.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Consent - Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon activity, including sexual activity. A person cannot consent to sexual activity if they are not of legal age, unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

Cyberstalking, cyberbullying, and online harassment - The prohibited behavior of stalking, bullying, and/or harassment through the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

Dating violence - Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

Disciplinary action - The sanctioning of any student pursuant to WAC 132S-100-440 for the violation of any designated rule or regulation of the college.

Discrimination - Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

Domestic violence - Asserted violent misdemeanor and felony offenses or conduct committed by a current or former spouse, current or former cohabitant, a person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Force - Use of physical violence and/or threats, intimidation or coercion to overcome resistance or gain access or produce consent. Sexual activity that is forced is by definition nonconsensual. However, nonconsensual sexual activity is not by definition forced.

Harassment - Language or conduct by any means that is unwelcome, severe, persistent, or pervasive, and is of such a nature that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably causing a reasonable person substantial emotional distress or undermines their ability to work, study, or participate in their regular life activities or participate in the activities of the college.

Hazing - Acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to admission, initiation, joining, or any other group-affiliation activity.

Hostile environment - Any situation in which there is harassing conduct that could be based on protected class status and is sufficiently severe or pervasive, and is so objectively offensive that it has the effect of substantially limiting the person's ability to participate in or benefit from the college's educational and/or social programs.

Hostile environment sexual harassment - Occurs when sex- or gender-based conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of substantially limiting the ability of the person to participate in or benefit from the college's educational and/or social programs.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays, and any full-day campus closures due to holidays or other circumstances are not regularly scheduled instructional days.

Nonconsensual sexual contact - Any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

Nonconsensual sexual intercourse - Any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at CBC that are within the jurisdiction of student code of conduct, which means that the amount of evidence must be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

President - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any of their responsibilities as may be reasonably necessary.

Protected class - Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, or genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

Quid pro quo sexual harassment - Occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Respondent - The student who is alleged to have violated CBC policy including this code of conduct or against whom disciplinary action is being taken or initiated. Respondent shall mean the same as responding party or other such term(s) meeting this definition as used in other college policies and procedures.

Rules of the student conduct code - The rules contained herein as now exist or which may be hereafter amended.

Service or notification - The process by which a document is officially delivered to a party. Service or notification is deemed complete and computation of time for deadlines begins upon personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.

Sexual exploitation - Occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy, engaging in voyeurism, non-consensual video or audio taping of sexual activity; sexually based stalking and/or bullying.

Stalking - Intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

Student - Any person from the time of application, admitted to CBC, or registered for courses either full time or part time, or participating in any other educational offerings at CBC, excluding students enrolled in the High School Academy.

Student appeals board - Also referred to as the "SAB" or "appeals board." The SAB is a three member panel which uses the brief adjudicative process to review appeals of disciplinary actions that do not include sanctions of expulsion, suspension for more than ten days, withholding or revocation of a degree, or loss of recognition of a student organization.

Student conduct board - Also referred to as the "SCB" is a ~~((three member))~~ four person panel which presides over cases that could result in a sanction of expulsion, suspension for more than ten days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to delegate any and all of their responsibilities as may be reasonably necessary.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct, which do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, and/or loss of recognition of a student organization pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-117 Composition of the student conduct board. The college will have a SCB composed of ~~((three members))~~ one chairperson and three decision-making members who shall be vice presidents and deans or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. ~~((One member, acting as))~~ The chairperson((;)) will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process((-Any three)) but will not participate in the deliberations of the decision-making members. The three decision-making members constitute a quorum of ((a conduct board)) the SCB and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-130 Decisions. All student conduct decisions are made using the preponderance of evidence standard of proof. These decisions become final after twenty-one

days from the date of notification to the student unless a written appeal is filed prior to that final date. Decisions to document a complaint without sanction are not eligible for appeal. All decision notifications by the SCO, SCB, SAB, or president will include a statement of the decision, a summary of relevant facts upon which the decision was based, and the procedures for appealing that decision if applicable. The notification will be personally delivered, sent electronically to the student's CBC email address, or by mail to the student's most recent address on file with the college within twenty instructional days of the student conduct proceeding. Students are responsible for promptly notifying the college of changes to their mailing address. Decisions of findings or sanctions by the SCO which do not include sanctions of expulsion, suspension for more than ten days, withholding or revocation of a degree, or loss of recognition of a student organization may be appealed to the SAB. ~~((Decisions of findings of all violations of the student code of conduct which are likely to include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization can be made by the SCO.))~~ Decisions of findings or sanctions from the SCB may be appealed to the college president. Decisions made by the SAB and college president on appeals are final.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-202 Conduct—Rules and regulations. The attendance of a student at CBC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

- (1) Conduct themselves in a responsible manner;
- (2) Comply with rules and regulations of the college and its departments;
- (3) Respect the rights, privileges, and property of other members of the academic community;
- (4) Maintain a high standard of integrity and honesty; and
- (5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit to violate any of the proscribed conduct, rules and regulations, or college policy will be subject to disciplinary action.

Amnesty. To support each student's contribution to a safe and effective campus community, the college will not discipline reporting parties or witnesses for code of conduct violations that occur in connection with reported alleged violation unless the college determines the violation was egregious. Egregious violations include conduct that risked someone's health or safety, or involved plagiarism, cheating, or academic dishonesty. Students may be reluctant to report proscribed conduct when alcohol, drugs, or other intoxicants were involved. To encourage reporting, this amnesty provision applies to alcohol- and drug-related student violations.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-400 Student conduct process. As an agency of the state of Washington, the college's SCO, SCB, SAB, or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

(1) Initiation of ~~((disciplinary action))~~ the student conduct process. A request ~~((for disciplinary action))~~ to initiate the student conduct process for alleged violation(s) of the student code of conduct must be made to the SCO as soon as possible following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party. The college may initiate ~~((disciplinary action under))~~ the student conduct ((code)) process regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Any member of the college's administration, faculty, staff, or any student or nonstudent may make a request for disciplinary action through the student conduct process and it must be a good faith claim. Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded. ~~((The SAB or college president will determine the admissibility of evidence and may seek clarification from witnesses as needed.))~~ If the complaint indicates that the matter involves sexual misconduct, the SCO will forward the complaint to the Title IX office for review in accordance with the college's Title IX grievance policy and procedure or nondiscrimination and harassment policy and grievance procedure, as applicable. Any determinations of relevant evidence or facts made under the Title IX grievance policy and procedure or the non-discrimination and harassment policy and grievance procedure shall be relied upon in the student conduct process. The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will conduct an investigation to determine responsibility. Except in cases of sexual assault or sexual violence, the parties may elect to mediate the dispute, which shall be facilitated by the SCO. If the SCO's investigation indicates that the alleged violation is so severe that a finding of responsibility is likely to merit expulsion, suspension of more than ten days, revocation of a degree, or loss of recognition of a student organization, the SCO will forward the findings of the investigation to the SCB for review, decision and disciplinary action using the full adjudicative process. If the SCO has a conflict of interest or is the subject of a complaint by the student, the vice president for student services shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for ~~((disciplinary action))~~ the student conduct process.

(2) Notification requirements.

(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX officer or the SCB, the SCO will provide the following written notification:

(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;

(ii) The specific sections of the student code of conduct which are alleged to have been violated;

(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;

(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;

(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and

(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within fifteen days from the date of the notice, the college may move forward with the conduct proceeding without their participation.

(b) If the student requests a conduct meeting within fifteen days of the notice, the student will be provided a written notice to appear for a conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college, not later than fifteen instructional days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violations, and a description of evidence, if any, of the violation.

(ii) Notify the student of the SCO's investigation and possible sanctions, if any.

(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(iv) Inform the student that failure to attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and disciplinary actions.

(v) Inform the student that they may be accompanied at the meeting by an advisor at their expense. The advisor cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.

(vi) Inform the student that they may present evidence to support their assertions during the meeting.

(3) Student conduct meeting - Brief adjudicative process.

(a) During the student conduct meeting, the student will be informed of the following:

(i) The specific acts and the provision(s) of college policy that the student is alleged to have violated;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility;

(iv) The student's right to appeal.

(b) The student will have the opportunity to review and respond to the allegation(s) and evidence and provide the SCO with relevant information, evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s).

(c) The advisor may assist the student during the conduct meeting, however the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions of the SCO may result in the advisor being excused from the meeting.

(4) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and considering the evidence, the SCO may take any of the following actions:

(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the student conduct process;

(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein;

(iii) Determine that further inquiry is necessary and schedule another meeting for reasonable cause; or

(iv) Refer the case to the SCB for the full adjudicative hearing process if the alleged violation is discovered to be of a severe nature and may result in sanctions that include expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(b) Notification of the decision by the SCO will be issued pursuant to WAC 132S-100-130 within thirty instructional days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA)(20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-407 Appeal process. (1)(a) Disciplinary decisions may be appealed by filing a written request with the office of the VPSS within twenty-one days of the notice of the decision. Disciplinary decisions of the SCO may

be appealed for review by the SAB using the brief adjudicative process. Disciplinary decisions of the SCB may be appealed for review by the college president using the brief adjudicative process. Disciplinary decisions by the SCO that include sexual misconduct may be applied for review by the SCB using the brief adjudicative process. Failure to file a written appeal within twenty-one days will result in the decision becoming final with no further right of appeal.

(b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals.

(2) Decisions may be appealed for one or more of the following:

(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the sanction(s) imposed were appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.

(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact-finding.

(3) Refusal to participate during the investigation or student conduct process does not constitute a right to appeal.

The VPSS or designee will forward appeals based on one or more of the required grounds for appeal to the SAB, SCB, or president as provided herein.

A party, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial appeal review as provided in these procedures.

Interim measures will remain in effect pending an appeal unless they have been removed pursuant to WAC 132S-100-445.

(4) Appeals of disciplinary action(s) will be taken in the following order:

(a) Complainants are afforded the same right to appeal as respondents in student conduct matters in which the complainant was the alleged target of violence or sexual misconduct. If both parties appeal the decision, the appeals will be reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.

(b) The SAB or college president's decision to affirm, reverse or modify the decision and/or sanction will be issued pursuant to WAC 132S-100-130.

(c) The SAB's, and the college president's decisions are final.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-413 Full adjudicative process. The SCB will use the following full adjudicative process to deter-

mine responsibility for serious violations which include sanctions of suspension for more than ten days, expulsion, withholding or revocation of a degree, or loss of recognition of a student organization.

(1) The parties will be sent written notification of the SCB adjudication proceedings within ninety days from the date of the filing of the appeal. The notification will contain the following:

(a) The time, date, and location of the hearing, which shall not be less than seven days from the date of the notice of the hearing;

(b) The specific acts alleged and the provision(s) of college policy which those acts violated;

(c) The SCB procedures;

(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;

(e) Unless otherwise ordered by the SCB chairperson, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors;

(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.

(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must ~~((be someone who is))~~ not be a witness or someone employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their representative/advisor.

The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chairperson. The advisor may not disrupt or interfere with any aspect of the proceeding.

The SCB chairperson shall have the right to impose reasonable conditions upon the participation of the advisor.

(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.

(4) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings.

A party may make a written request to the SCB chairperson for the recusal of an SCB member no less than five instructional days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chairperson will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chairperson grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.

(5) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. ~~((Each party is allowed a maximum of three character witnesses to appear on their behalf.))~~ The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing. Witnesses not listed will not participate in the hearing.

(6) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chairperson.

(7) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chairperson. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing.

At the discretion of the SCB chairperson, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(8) The SCB chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chairperson may be excluded from the proceedings and may be subject to disciplinary action.

(9) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chairperson may require any participant of the hearing to provide all questions in writing to the SCB chairperson. The SCB chairperson, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chairperson has chosen not to read will be documented on record and kept within the case file. The SCB chairperson will decide matters related to the order of the proceedings.

(10) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will

be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.

(11) After weighing and considering the evidence, the SCB will decide by ~~((majority))~~ unanimous vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall ~~((impose))~~ determine sanctions as ~~((set forth))~~ provided herein.

(12) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(13) The notice of decision of the SCB will be issued pursuant to WAC 132S-100-130. A copy of the SCB's decision will also be filed with the office of the SCO.

(14) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal to the college president as provided herein.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-417 Brief adjudicative process. (1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.

(2) The SCO will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.

(3) The SCB will use the brief adjudicative process to review appeals of disciplinary decisions which include allegations of sexual misconduct but do not include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(4) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the SCB.

(5) The SAB will use the brief adjudicative process to review timely appeals of disciplinary decisions which do not include sexual misconduct, sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization.

(6) Within twenty days of filing the appeal, the SAB or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties, and based on a preponderance of the evidence by unanimous vote as applicable, shall make a determination to affirm, reverse, or modify the findings and/or sanctions. The SCB, SAB and president shall have the discretion to seek clarification from witnesses as needed.

(7) Notification of the decision will be issued pursuant to WAC 132S-100-130.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-433 Sexual misconduct procedures. (1) Any reports of sexual misconduct will be forwarded to the college's Title IX coordinator or designee ((shall)) for review and ((investigate reports of sexual misconduct)) investigation in accordance with the college's Title IX grievance policy and

procedure or nondiscrimination and harassment policy and grievance procedure, as applicable.

(2) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonable risk to the health, safety, and welfare of the ~~((complainant))~~ parties or other members of the college community, or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(3) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in the disciplinary process, to simultaneously receive notifications, and to appeal the finding and/or sanction.

(4) Notification of the results of the investigation or disciplinary action, if any, will be personally delivered, sent electronically to the student's CBC email address, or sent by mail to the most recent address in the student's record on file with the college.

(5) In the event of conflict between the ~~((sexual misconduct))~~ Title IX grievance policy and procedure or the nondiscrimination and harassment policy and grievance procedure(s) and the student code of conduct, the ~~((sexual misconduct procedures))~~ Title IX grievance policy and procedure or nondiscrimination and harassment policy and grievance procedure, as applicable, shall govern.

(6) All college employees who coordinate, investigate, or adjudicate issues involving sexual misconduct shall receive annual training as required by law, including training on domestic violence, dating violence, sexual assault, stalking and investigation and adjudication processes that protect the safety and due process rights of the parties.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-100-500 Records of disciplinary action.

(1) Records of all disciplinary actions will become part of the student's disciplinary record and kept by the office of the SCO. Disciplinary records are "education records" as defined by FERPA and shall be maintained and disclosed consistent with FERPA and the college's educational records retention policies. All documentation of the student conduct proceedings will be preserved for at least seven years, except in ~~((disciplinary actions))~~ decisions where no violation(s) of the student code of conduct was found. In such cases, only a record of the finding of no violation shall be maintained in the student's file or other college repository after the date of the student's graduation or award of a degree or certificate or for one calendar year, whichever is shorter. All records of expulsion will be kept for twenty-five years from the date of the decision.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by that office. Such recordings will be placed in the student's disciplinary records. A student has a disciplinary record only after notification of a decision is made and the student is found responsible for a violation of the student code of conduct. A case that is currently under investigation or is classified as "documentation only" is not a disciplinary record.

(3) The Family Educational Rights and Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

Chapter 132S-110 WAC

TITLE IX HEARING PROCEDURE FOR STUDENTS

NEW SECTION

WAC 132S-110-010 Order of precedence. This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to the college's Title IX grievance policy and regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Columbia Basin College's standard disciplinary procedures, WAC 132S-100-010 through 132S-100-500 these procedures shall take precedence.

NEW SECTION

WAC 132S-110-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or

illegitimately, as an ancestor, descendant, brother, or sister either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132S-110-030 Title IX jurisdiction. (1) This procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of Title IX sexual harassment as that term is defined in this procedure.

(2) For purposes of this procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator or designee determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from addressing allegations or taking disciplinary action against conduct that violates provisions of the college's student conduct code, chapter 132S-100 WAC, federal or state law, or other college policies.

(4) If the Title IX coordinator or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or does not constitute a Title IX vio-

lation, the Title IX coordinator or designee will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132S-110-040 Initiation of hearing. (1) Upon receiving the Title IX investigation report the Title IX coordinator or designee will review the report to determine whether there are sufficient grounds to proceed with a live hearing.

(2) If the Title IX coordinator or designee determines that there are sufficient grounds to proceed, the Title IX coordinator or designee will initiate a live hearing by filing a written notice with the chair of the Title IX student hearing panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) If the party does not have an advisor, the college will provide a list of available advisors for the party to choose from at no cost to the party.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132S-110-050 Prehearing procedure. (1) Upon receiving the notice of live hearing, the chair of the Title IX student hearing panel will send a hearing notice to all parties. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee provides the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the hearing panel chair with copies to all parties and the Title IX coordinator.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132S-110-060 Rights of parties. (1) To the extent they are consistent with this procedure, the college's student conduct procedures, chapter 132S-100 WAC and this procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish whether or

not the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator or designee will provide a list of available advisors for the party to choose from at no cost to the party.

NEW SECTION

WAC 132S-110-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The hearing panel chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.**

(3) **Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:**

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The hearing panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The hearing panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132S-110-080 Initial order. (1) The Title IX student hearing panel will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Describes findings of fact supporting the decision of the hearing panel;

(d) Reaches conclusions as to whether the facts establish that the respondent is responsible or not responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the hearing panel's determination of each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The hearing panel chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132S-110-090 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the following procedures and time frames:

(a) An appeal may be filed in writing with the president's office within twenty-one days of the notice of initial order, with copies to all parties and the Title IX coordinator.

(b) The request for appeal must include a brief statement explaining the grounds for the appeal or why the party is seeking review. Disagreement with the initial order and/or sanctions does not, by itself, represent grounds for appeals.

(c) Decisions may be appealed for one or more of the following:

(i) To determine whether there was a procedural irregularity that substantially affected the outcome of the initial order. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(ii) To consider new evidence, sufficient to alter a decision, that was not reasonably available during fact finding and cross-examination, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation, live hearing, or fact finding. Refusal to participate during the investigation or live hearing does not constitute a right to appeal.

(iii) The Title IX coordinator or designee, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(d) A party who timely appeals a decision under this procedure, has a right to a prompt, fair, and impartial review of their appeal.

(e) Supportive measures will remain in effect pending an appeal.

(f) Complainants are afforded the same right to appeal as respondents. If both parties appeal the decision, the appeals will be reviewed in the order in which they are filed or reviewed together, if they state the same, similar, or related grounds or substance for appeal.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-105 Definitions. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

~~((1) "Board" shall mean the board of trustees of Columbia Basin College.~~

~~(2) "Campus" shall mean any or all real property owned, operated, or maintained by Columbia Basin College.~~

~~(3) "College" shall mean Columbia Basin College.~~

~~(4) "Faculty members" shall mean any employee of Columbia Basin College who is employed to teach at Columbia Basin College.~~

~~(5) "Campus security officer" shall mean an employed security officer, security guard or communication officer of the college.~~

~~(6) "Staff" shall mean the classified, exempt and administrative employees of Columbia Basin College.~~

~~(7) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle powered by a motor.~~

~~(8) "Visitors" shall mean any person or persons, excluding students as defined in WAC 132S-100-030, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.~~

~~(9) "Employee parking permits" shall mean permits which are valid annually and shall be obtained from the plant operations office at the fee set by administration.~~

~~(10) "Temporary permits" shall mean permits which are valid for a specific period of time designated on the permit.)~~

(1) "Annual parking permit(s)" shall mean parking permits that are valid annually and obtained from the campus security office at the fee set by administration, which reserves designated parking spaces on campus for college faculty, staff, or the employees of college property lessees. Campus security shall maintain a list of reserved spaces on campus that correspond with annual parking permits. This definition does not include temporary, special, visitor, carpool permits, or residence hall permits.

(2) "Campus(es)" shall mean any or all real property owned, operated, or maintained by Columbia Basin College.

(3) "Campus security officer" shall mean an employed security officer or communication officer of the college.

(4) "College" or "CBC" shall mean Columbia Basin College.

(5) "Faculty" shall mean any employee of Columbia Basin College who is employed to instruct, counsel, or provide library services to students at Columbia Basin College.

(6) "Residence hall" shall mean any and all real property owned and operated by Columbia Basin College for the purpose of providing housing for its students, which includes, but is not limited to, Sunhawk Hall located at 2901 N. 20th Avenue, Pasco, WA 99301.

(7) "Residence hall permits" shall mean parking permits that are valid for parking at the residence hall and issued by the director for resident life. The director for resident life shall maintain a list of students that are issued parking permits. Such permits are only valid at the residence hall while the student is living at the residence hall.

(8) "Staff" shall mean the classified, exempt and administrative employees of Columbia Basin College.

(9) "Temporary permit(s)" shall mean parking permits which are valid for a specific period of time designated on the permit. This definition shall include temporary, special, visitor, carpool, or shop permits.

(10) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle powered by a motor.

(11) "Visitors" shall mean any person or persons, excluding students as defined in WAC 132S-100-030, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-110 Purposes of regulations. The purposes of the rules and regulations established by this chapter are:

- (1) To control parking on college owned parking lots;
- (2) To protect and control pedestrian and vehicular traffic on campus;
- (3) To assure access at all times ~~((to))~~ to emergency vehicles and equipment;
- (4) To minimize traffic disturbance during class hours;
- (5) To expedite ~~((Columbia Basin))~~ college business, protect state property, and ~~((to))~~ provide maximum safety and convenience.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-115 Applicable rules and regulations. The traffic and parking regulations which are applicable upon state lands devoted to the educational, recreational and research activities of ~~((Columbia Basin))~~ the college are as follows:

- (1) The motor vehicle and other traffic laws of the state of Washington;
- (2) The traffic codes of Pasco ~~((and))~~ or Richland, as applicable; and

(3) Special regulations set forth in this chapter.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-130 Regulatory signs and directions.

The vice president of administrative services or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the ~~((entry ways))~~ entrances and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be so made and placed to best effectuate the rules and regulations contained in this chapter. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by campus security officers in the control and regulation of traffic.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-135 Speed limit. No vehicle shall be operated on the campuses at a speed in excess of fifteen miles per hour ~~((in parking lots))~~; or such lower speed as is reasonable and prudent in the circumstances. No vehicle of any type shall at any time use the campus parking lots for reckless or negligent driving or unauthorized activities.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-300-140 Pedestrian's right of way. (1)

The operator of a vehicle shall yield the right of way, slowing down or stopping, if need be to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(3) Every pedestrian crossing at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles.

(4) College administration, campus security staff, law enforcement and/or emergency services personnel are authorized to place signs, barricades, direct traffic flow, and other traffic directions upon/or in the CBC campus parking lots and campus grounds which include crosswalks, breezeways, or other areas for the regulation of traffic and parking that will provide safe ingress to and egress from CBC campuses. Pedestrians are responsible for obeying directions and safe travel through campus.

(5) Where a sidewalk is provided, pedestrians shall proceed upon such a sidewalk.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-205 Enforcement. (1) Enforcement of the parking rules and regulations ~~((will begin the first day of the first week of full classes of the fall quarter and will continue until the end of summer quarter. These rules and regulations will not be enforced on Saturdays, Sundays, and official college holidays))~~ in this chapter are subject to enforcement from 7:00 a.m. to 4:30 p.m., Monday through Thursday, and 7:00 a.m. to 12:00 p.m., Friday, except on legal holidays as identified in WAC 132S-05-015. However, at the residence hall(s), parking rules and regulations in this chapter are subject to enforcement at all times.

(2) The vice president of administrative services or designee shall be responsible for the enforcement of the rules and regulations contained in this chapter and may issue fines or penalties as described in this chapter. The vice president of administrative services is hereby authorized to delegate this responsibility to the campus security officers or other ~~((designated subordinates))~~ designees.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-300 Issuance of parking citations.

Citations and fines may be levied for ~~((parking violations))~~ any violation of this chapter that occurs on ((Columbia Basin College (CBC)) either campus(es)). A schedule of fines shall be published on the college's website located at www.columbiabasin.edu. A copy of the fine schedule shall also be available in the campus security office. Upon the violations of any of the rules and regulations contained in this chapter, the vice president of administrative services, and campus security and staff, including student workers, may issue a warning, ~~((summons))~~ or citation setting forth the date, the approximate time, permit number, license information, infraction, officer, and fines as appropriate. Such warnings ~~((summons))~~ or ~~((traffic))~~ citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

WAC 132S-300-305 Authorization for issuance of parking permits. The campus security office, or designee, is authorized to issue ~~((annually))~~ annual parking permits to faculty, staff ~~((members, employees of private parties and students using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college)), and employees of college's lessees using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college. The director for residence life, or the director's designee, is authorized to issue residence hall permits to students living at the residence hall.~~

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-310 Valid parking permits. A valid parking permit is:

(1) A current annual parking permit issued by ~~((plant operations))~~ the campus security office and properly displayed;

(2) A temporary ~~((or visitor's parking))~~ permit;

~~(a) From the sponsoring department ((and properly displayed;~~

~~(3) A special parking permit and properly displayed;~~

~~(4) A shop permit authorized by a vocational technical instructor and properly displayed; or~~

~~(5) A carpool permit authorized by college security and properly displayed));~~

(b) From a career or technical educational faculty member;

(c) A carpool permit authorized by the campus security office;

(d) A special parking permit; or

(e) A residence hall permit issued by the director for resident life and properly displayed.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-315 Display of parking permit. (1) All annual parking permits and residence hall permits shall be properly displayed and viewable from the front windshield of the vehicle. Temporary, special, visitor, carpool, or shop permits shall be placed in a visible position on the dashboard of the automobile. Additionally, for a vehicle utilizing a carpool space, two or more carpool permits must be displayed on the dashboard in a manner that is visible to campus security officers (e.g., cannot be stacked or overlapping, etc.).

(2) Permits not displayed pursuant to the provisions of this section shall not be valid and the vehicle may be subject to a parking ~~((violation))~~ citation and/or penalty.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-320 Transfer of parking permit. ~~((Annually issued))~~ Annual parking permits purchased by individuals stated in WAC 132S-300-305 are transferable.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-335 Allocation of parking space. The parking space available on campus for ~~((annually issued))~~ annual parking permits shall be designated and allocated by the ~~((plant operations))~~ campus security office or designee in such a manner as will best effectuate the objectives of the rules and regulations in this chapter.

(1) Parking spaces will be designated for use of visitors on campus.

(2) Parking spaces for persons with disabilities will be designated pursuant to RCW 46.61.581. The allocated parking spaces are exclusively for use by those designated, pro-

vided that appropriate state of Washington "disabled permit" are displayed properly within their vehicles.

(3) Parking spaces will be designated for use by carpool vehicles.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-340 Parking within designated spaces. (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle with the vehicle facing head in.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

(4) Those spaces that contain a parking space number are reserved for those that pay the fee associated with the annual parking permit and are assigned the space for the duration of the year. Those that park in a reserved space without the corresponding annual parking permit may be subject to citation and/or penalty.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-300-400 Fines and penalties. The vice president of administrative services or designee is authorized to impose fines and penalties for the violation of the rules and regulations contained in this chapter.

(1) **Fines.** A schedule of fines shall be published online at the college's website located at www.columbiabasin.edu. An individual receiving a parking citation must pay fine(s) imposed in accordance with the schedule of fines. Visitors who have received citations for parking violations may return the citation to the campus security office with name, address, and a brief explanation. The chief campus ~~((safety and))~~ security ~~((supervisor))~~ official may void the citation as a courtesy notice. Any individual may file an appeal for any parking citation under the appeals section of this subchapter and as described in further detail on the college's website.

(2) **Unpaid fines.** If any parking citation remains unpaid eight days after issuance on the citation or after appeal of the citation, Columbia Basin College may take actions including, but not limited to:

(a) Initiate collection action;

(b) Make collections from funds received from or on behalf of a student;

(c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;

(d) Refer the matter for discipline under chapter 132S-100 WAC;

(e) Deny any other provisions or other services, including refunds.

(3) **Student conduct referral.** An accumulation of unpaid citations or traffic offenses by a student may be referred to the chief student conduct officer for initiation of disciplinary proceedings under chapter 132S-100 WAC as the chief student conduct officer deems appropriate. No disciplinary action for unpaid citations shall be taken until the student has completed the appeal process or waived (~~his or her~~) their appeal rights.

(4) **Impoundment.** Vehicles parked on a Columbia Basin College campus in violation of any of the regulations contained in this chapter may be impounded at the discretion of the vice president of administrative services or the chief campus (~~(safety and) security~~) (~~(supervisor)~~) official. If a vehicle is impounded, it may be taken to such place for storage as the vice president of administrative services or designee selects. The expenses of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by (~~him or her~~) them prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(5) **Appeals.** Any fines and penalties for citations under the rules and regulations of this chapter must be appealed in writing, stating fully all grounds for appeal, within five days from the date of the citation, to the chief campus (~~(safety and) security~~) (~~(supervisor)~~) official or designee who will:

(a) First level appeal. After review of the appeal the chief campus (~~(safety and) security~~) (~~(supervisor)~~) official or designee may uphold, reduce or waive the fine(s) associated with the citation. Any fine(s) still levied against the appellant must be paid in accordance with the schedule of fines unless appellant wishes to pursue a second-level appeal. If the citation remains unpaid thereafter, the college may take actions stated above and/or in chapter 132S-100 WAC. The chief campus (~~(safety and) security~~) (~~(supervisor)~~) official will advise the appealing party in writing as soon as practicable of (~~his or her~~) their decision, along with second-level appeal rights and location of the appeal form.

(b) Second-level appeal. If the appealing party is dissatisfied with the chief campus (~~(safety and) security~~) (~~(supervisor's)~~) official's decision, the appealing party may submit the same appeal to the citation review committee within five days of receipt of the chief campus (~~(safety and) security~~) (~~(supervisor's)~~) official's decision. Failure to appeal in writing within the five-day period constitutes a waiver of right of appeal. The written appeal form completed by the appealing party must either request an appearance before the citation review committee or include a written appeal for the citation review committee to consider. Upon receipt of a request to appear before the committee, the appealing party will be notified in writing of the next scheduled committee meeting at which the appealing party can present (~~his or her~~) their appeal. The citation review committee will review the second-level appeal and advise the appealing party as soon as practicable of the committee's decision. The citation review committee hears appeals of citations issued pursuant to the regulations of this chapter and using the following criteria:

(i) Did an institutional error occur?

(ii) Were there extenuating circumstances that caused the error to occur?

(iii) Did the appealing party make a good faith effort to comply with the parking rules?

The campus security department is permitted to provide responsive information for the appeal and/or to provide rebuttal during the appealing party's presentation to the committee. The decision of the citation review committee will be final.

(6) **Composition of citation review committee.** The college president shall appoint no less than eight members to the citation review committee. The committee will be composed of at least one faculty member, one exempt staff, one classified staff and one student with the remaining from the same group type in equal numbers. Each timely filed appeal will be reviewed by a minimum of three available members of the committee and in odd numbers thereafter to avoid a tie for decision making purposes. This composition of the committee will be expected whether the appeal is for the appealing party's presentation or review of the appealing party's written appeal.

(7) **Applicability.** These appeal procedures will be applicable to all students, faculty and staff or other persons utilizing college facilities who receive fines for violations of these rules and regulations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132S-300-345 Day parking.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132S-09-010 Introduction.

WAC 132S-09-020 Definitions.

WAC 132S-09-030 Who may file a complaint.

WAC 132S-09-040 Confidentiality and right to privacy.

WAC 132S-09-050 Responsible employees and reporting responsibilities.

WAC 132S-09-060 Investigation procedure.

WAC 132S-09-070 Publication of antidiscrimination policies and procedures.

WAC 132S-09-080 Limits to authority.

WAC 132S-09-090 Nonretaliation, intimidation or coercion.

WAC 132S-09-100 Criminal complaints.

WAC 132S-09-110 Other discrimination complaint options.

WSR 20-19-076
PROPOSED RULES
HEALTH CARE AUTHORITY
 [Filed September 15, 2020, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-072.

Title of Rule and Other Identifying Information: WAC 182-548-1400 Federally qualified health centers—Payment, 182-548-1450 Federally qualified health centers—General payment information, 182-549-1400 Rural health clinics—Reimbursement and limitations, and 182-549-1450 Rural health clinics—General payment information.

Hearing Location(s): On October 27, 2020, at 10:00 a.m. In light of the current public health emergency and the Governor's Safe Start plan, it is yet unknown whether, by the date of this public hearing, restrictions on meeting in public places will be eased. Therefore, this hearing is being held virtually only. This will not be an in-person hearing and there is not a physical location available.

You must register for this public hearing **before** 10:00 a.m. PDT, October 27, 2020. **Registration URL** <https://attendee.gotowebinar.com/register/6582244361493165837>. **Webinar ID** 573-043-531. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than October 28, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 27, 2020.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by October 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these sections to replace fee-for-service equivalent language with actual managed care payments.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396a (bb)(5)(A).

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Michaela Snook, P.O. Box 45518, Olympia, WA 98504-2716, 360-725-0917.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's

analysis showing how costs were calculated. The proposed rules are regarding rates and payment methodologies, and therefore do not impose costs on small businesses.

September 15, 2020

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

WAC 182-548-1400 Federally qualified health centers—Payment methodologies. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate.

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving

their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebasings will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating FQHCs for services provided beginning July 1, 2017.

(a) Each FQHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each FQHC. The PMPM rate accounts for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the FQHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the FQHC a PMPM rate in addition to the amounts the MCO pays the FQHC. The agency may prospectively adjust the FQHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) FQHC encounter rate changes.

(iv) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the FQHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

(B) If the FQHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

AMENDATORY SECTION (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

WAC 182-548-1450 Federally qualified health centers—General payment information. (1) The agency limits encounters to one per client, per day except in the following circumstances:

- (a) The visits occur with different health care professionals with different specialties; or
 - (b) There are separate visits with unrelated diagnoses.
- (2) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.
- (3) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (4) of this section apply.

(4) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(5) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

(6) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency ~~((will))~~ compares the amount ~~((actually))~~ paid in enhancement payments to the amount determined by the following formula: ~~((fee-for-service equivalent of))~~ actual MCO payments for FQHC services. If the FQHC has been overpaid, the agency ~~((will))~~ recoups the appropriate amount. If the FQHC has been underpaid, the agency ~~((will))~~ pays the difference.

(7) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC submits its first audited medicare cost report to the agency, the agency pays the RHC an average encounter rate of other similar RHCs within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs;

(b) Upon submission of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available to the agency. The agency then increases the encounter rate each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(a) The APM used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result was the year 2009 APM rates for each RHC that chose to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM used each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates are increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency periodically rebases the encounter rates using the RHC cost reports and other relevant data. Rebasing is done only for RHCs that are reimbursed under the APM.

(e) The agency makes sure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. The PMPM rate will account for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

(v) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iv) of this subsection.

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1450 Rural health clinics—General payment information. (1) The medicaid agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) Rural health clinic (RHC) services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) The agency pays for non-RHC services provided in an RHC on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(4) For clients enrolled with a managed care organization (MCO), that MCO pays for covered RHC services.

(5) For clients enrolled with MCOs, the RHC receives an encounter rate using either the method described in (a) or (b) of this subsection.

(a) RHCs receive an enhancement payment in addition to the MCO's negotiated payment. The agency makes enhancement payments in amounts necessary to make sure that the RHC receives the full encounter rate to comply with 42 U.S.C. 1396a (bb)(5)(A).

(i) The RHCs receive a monthly enhancement payment for each managed care client assigned to them by an MCO.

(ii) To make sure that each RHC receives the appropriate amounts, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency compares the amount (~~(actually)~~) paid in enhancement payments to the amount determined by the following formula: (Managed care encounters times encounter rate) less (~~(the fee-for-service equivalent of)~~) actual MCO payments for RHC services. If the RHC has been overpaid, the agency recoups the appropriate amount. If the RHC has been underpaid, the agency pays the difference. For dates of service on and after January 1, 2018, reconciliations are conducted in the calendar year following the calendar year for which the enhancements were paid. Reconciliations are conducted by the agency or the clinic with final review and approval by the agency. The process of settling over or under payments may extend beyond the calendar year in which the reconciliations were conducted.

(b) Effective January 1, 2018, instead of distributing monthly enhancement payments to the RHCs, MCOs pay the full encounter rate directly to participating clinics for encounter-eligible services.

(i) RHC participation in this option is voluntary. The RHC must notify the agency in writing whether it will participate or not by no later than November 1st prior to the year of participation.

(ii) The agency performs a reconciliation with the MCO as outlined in the MCO contract. Reconciliations make sure appropriate amounts are paid to each RHC and that MCOs are not put at risk for, or have any right to, the enhancement portion of the claim. If an MCO has been overpaid, the agency recoups the appropriate amount. If an MCO has been underpaid, the agency pays the difference.

(iii) RHCs participating in the revised alternative payment method (APM) as described in WAC 182-549-1400(8) are not eligible to receive encounter payments directly from MCOs under this section.

(6) Only those services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for services provided to clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

WSR 20-19-084

PROPOSED RULES

GAMBLING COMMISSION

[Filed September 16, 2020, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-081.

Title of Rule and Other Identifying Information: WAC 230-06-035 Credit, loans, or gifts prohibited and 230-14-047 Standards for electronic video pull-tab dispensers.

Hearing Location(s): On October 15, 2020, and November 17, 2020, at 9:00 a.m., at Washington State Gambling Commission, 4564 7th Avenue S.E., Lacey, WA 98503. Public hearings will take place at scheduled commission meetings. The meeting dates, times, and locations are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting, select "The Commission," and then select "Public Meetings," to confirm hearing date, location, start time, and agenda items.

Date of Intended Adoption: November 17, 2020.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3632, by November 5, 2020.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is considering amending its payment method rules to accept credit cards as a payment method option for card games, pull-tabs, and bingo.

Reasons Supporting Proposal: Under the current rules, the following payment methods are accepted for the participation of gambling activities: Cash, check, gift certificate, gift card, and electronic point-of-sale transfer. The agency received a petition asking that commercial pull-tab operators be allowed to accept credit cards. The petition was accepted but with the purpose to take a broader review at allowing credit cards to be used for all gambling activities where it is not currently allowed. The proposed changes will allow operators the option to accept credit cards as a method of payment for card games, pull-tabs, and bingo (raffles already allow the use of credit cards). Amusement games are excluded at this time because they were not contemplated at the time the petition was accepted and staff has not had the opportunity to explore how credit cards could be used for amusement games while continuing to ensure they operate as intended by the legislature and how the use of credit cards for amusement games may impact minors who play these games.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Businesses have the option to accept credit cards as a method of payment.

Name of Proponent: Steven Berven, private.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule change was requested by a licensee to help his business and the proposed rules look to put into effect the licensee's request. Additionally, the proposed rule amendments allow, but do not require, businesses to accept credit cards as a method of payment for card games, pull-tabs, and bingo. Therefore, a licensee does not need to incur any costs under these proposed rules unless it determines accepting credit cards is in its best business interests. Then, the implementation of this option may impose some minor costs upfront to businesses if they choose to accept credit cards, such as making changes to their point-of-sale system and/or credit card transaction fees. However, if a business chooses to implement this change, the commission expects the change would result in positive net revenue or the business would not decide to accept credit cards, which is still an option. Therefore, it is unlikely to have a net cost to businesses that choose to implement this change.

September 11, 2020
Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-06-035 Credit, loans, or gifts prohibited.

(1) Licensees, employees, or members must not offer or give credit, loans, or gifts to any person playing in an authorized gambling activity or which makes it possible for any person to play in an authorized gambling activity.

(2) Gifts are items licensees give to their customers. Licensees must not connect these gifts to gambling activities we regulate unless the gifts are:

- (a) Gambling promotions; or
- (b) Transportation services to and from gambling activities; or
- (c) Free or discounted food, drink, or merchandise which:
 - (i) Costs less than five hundred dollars per individual item; and
 - (ii) Must not be traded back to you for cash; and
 - (iii) Must not give a chance to participate further in an authorized gambling activity.

(3) You must collect the price required to participate in the gambling activity in full before allowing someone to participate. Licensees must collect cash, check, gift certificate, gift card, credit card, or electronic point-of-sale bank transfer.

(4) If the price paid for the opportunity to play a punch board or pull-tab series is ten dollars or less, licensees may collect the price immediately after the play is completed.

(5) If a charitable or nonprofit organization has a regular billing system for all of the activities of its members, it may use its billing system in connection with the playing of any licensed activities as long as the organization limits play to full and active members of its organization.

~~((6) Charitable or nonprofit organizations may allow credit cards, issued by a state regulated or federally regulated financial institution, for payment to participate in raffles.))~~

AMENDATORY SECTION (Amending WSR 14-23-048, filed 11/14/14, effective 12/15/14)

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

- (a) Pull-tabs; and
- (b) Flares; and
- (c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

- (a) Use a video monitor for entertainment purposes only; and
- (b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and
- (c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and
- (d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

- (i) An electronic accounting of the number of pull-tabs dispensed; and
- (ii) A way to identify the software version and name; and
- (iii) A way to access and verify approved components; and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) Cash cards used in electronic video pull-tab dispensers must:

- (a) Be purchased with cash, check, gift certificates, credit card, or electronic point-of-sale bank transfer before use in the dispenser; and
- (b) Be convertible to cash at any time during business hours; and
- (c) Subtract the purchase price of the pull-tab one pull-tab at a time.

(4) Electronic video pull-tab dispensers that accept cash cards may award any pull-tab cash prize of twenty dollars or less onto the cash card.

WSR 20-19-093
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 17, 2020, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-098.

Title of Rule and Other Identifying Information: Chapters 181-01 and 181-02 WAC, amend to incorporate recom-

AMENDATORY SECTION (Amending WSR 17-11-069, filed 5/17/17, effective 6/17/17)

WAC 181-02-002 WEST-E content knowledge assessment requirement, exemptions, and equivalent assessments. (1) Meeting the content knowledge assessment requirement under this chapter is required for issuance of a Washington state residency or professional teacher certificate.

(2) Individuals who hold a certificate through the National Board for Professional Teaching Standards are exempt from the ((WEST-E)) content knowledge assessment requirement if there is a direct equivalency between the endorsement sought and the national board certificate, or the individual has a second tier certificate from a state as approved by the professional educator standards board and published by the superintendent of public instruction. The equivalent National Board for Professional Teaching Standards and Washington endorsement table approved by the professional educator standards board may not be changed without prior professional educator standards board approval.

((2)) (3) Candidates applying for a Washington state residency or professional teaching certificate ((per)) under WAC 181-79A-257 who have taken and passed equivalent content tests from other states as approved and published by the professional educator standards board, are ((exempt from the WEST-E)) considered to have met the content knowledge assessment requirement unless applying for a new endorsement.

AMENDATORY SECTION (Amending WSR 14-24-058, filed 11/25/14, effective 12/26/14)

WAC 181-02-003 WEST-E content knowledge assessment transition to other content area tests. The board will approve other content area tests either as alternatives or replacements. On the scheduled dates of board approval, tests previously approved that were taken before the scheduled changes will be accepted as meeting the requirements, including subsections that substantially meet the content area requirements as published.

NEW SECTION

WAC 181-02-005 Case-by-case exception process for content knowledge assessment. (1)(a) The Washington professional educator standards board may permit exceptions from the content knowledge assessment requirements under RCW 28A.410.220 (3) and (4) on a case-by-case basis.

(b) Consistent with the discretion accorded to the professional educator standards board under RCW 28A.410.220(4), the equivalent assessments, exemptions, and extensions provided for under this chapter are the sole exceptions to the content knowledge assessment requirements.

(2) Preparation program providers approved in a specific endorsement area by the professional educator standards board may recommend a candidate as meeting the content knowledge assessment in that endorsement area through the case-by-case exception process under this section.

(a) Candidates must take the content knowledge assessment once.

(b) Program providers may recommend a candidate for certification if they determine the candidate has the requisite knowledge and skills for that content knowledge assessment.

(c) The candidate must meet all other requirements for the endorsement and/or the certificate.

(d) Candidates adding an endorsement on a test-only basis under WAC 181-82A-204 (2)(c) are not eligible for a case-by-case exception for the content knowledge assessment.

(3) The preparation program provider must establish and convene a committee of at least three individuals for review of case-by-case exceptions for candidates not meeting the passing score on a content knowledge assessment.

(4) Alternative evidence.

(a) Preparation program providers must review at least two forms of evidence for meeting the content knowledge requirement.

(b) Preparation programs may use the following alternative forms of evidence for their review:

(i) Evidence submitted by candidate to demonstrate expertise in content knowledge;

(ii) Coursework; or

(iii) Other forms of evidence as determined by the program provider.

WSR 20-19-095

PROPOSED RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed September 17, 2020, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-043; proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); and proposal is exempt under RCW 19.85.061.

Title of Rule and Other Identifying Information: On May 19, 2020, the Federal Register published amendments to Title IX regulations (85 F.R. 30026-30579; 34 C.F.R. 106). The new regulations address the grievance process for formal complaints of sexual harassment. An emergency rule was filed on August 14, 2020, with updates to the college's chapter 495B-121 WAC, Student conduct code, to be compliant with federal regulations. In addition, other sections of chapter 495B-121 WAC, Student conduct code, are being updated.

Hearing Location(s): On October 27, 2020, at 11:00 a.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Join Zoom meeting: <https://btc-tech.zoom.us/j/92859208664>. Meeting ID: 928 5920 8664. One tap mobile: +125321 58782,,92859208664# US (Tacoma), +13462487799,,92859208664# US (Houston). Dial by your location: +1 253 215 8782 US (Tacoma).

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by October 31, 2020.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by October 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All public institutions must update their policies and procedures to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020. In order to comply, Bellingham Technical college must update portions of its student conduct code with certain procedures required by Title IX that the college must take in response to allegations of sexual harassment. Bellingham Technical College is also updating other sections of its student conduct code procedures.

Reasons Supporting Proposal: If the college does not update its student conduct code to comply with the new Title IX regulations, it would be in violation of federal statute and at risk of lawsuits.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130.

Statute Being Implemented: 85 F.R. 30026-30579; 34 C.F.R. 106.

Rule is necessary because of federal law, 85 F.R. 30026-30579; 34 C.F.R. 106.

Name of Proponent: Bellingham Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There are not costs imposed with the amendments to these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 85 F.R. 30026-30579; 34 C.F.R. 106.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: Chapter 495B-121 WAC is amended in response to legislative directive 85 F.R. 30026-30579; 34 C.F.R. 106.

September 2, 2020

Ronda Laughlin

Executive Assistant to the President

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-010 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College (~~administrator~~) employee designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code. (~~The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~)

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. (~~The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.~~)

(5) "The president" is the president of (~~the~~) Bellingham Technical College. The president is authorized to:

(a) Delegate any (~~and all~~) of (~~his or her~~) their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or (~~and~~) an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail, or first-class mail, to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(10) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(11) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(12) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students(-)" for purposes of this chapter.

(13) "Day" (~~(and)~~) means a calendar day, except when a "business day" is specified. "Business day" means a week-day, excluding weekends and college holidays.

(14) (~~"Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.~~

(15) ~~"Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.)~~ A "complainant" is an alleged victim of sexual misconduct.

(15) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-255(13).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical College the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. (~~The vice president of student services or~~) Unless otherwise specified, the student conduct officer, or their delegee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-040 Prohibited student conduct. (~~Prohibited student conduct for which~~) The college may impose (~~sanctions includes, but is~~) disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, any of the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or (~~disruption of~~) disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on campus property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, (~~stalking~~) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this (~~subsection:~~

(a) ~~Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

(b) ~~Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent)) code. "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.~~

(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with

spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

~~(6) ((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization; or~~

~~(c) Any other person or organization, or possession of such property or money after it has been stolen;)) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

~~(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of ((his or her)) their duties, including failure to properly identify oneself to such person when requested to do so.~~

~~(8) ((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9)) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in ((his or her)) their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; ((or))~~

~~(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission((-)); or~~

~~(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.~~

~~((10)) (9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~

~~((11) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows~~

~~that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.~~

~~(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.~~

~~(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.~~

~~(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.~~

~~(16) Conduct that is disorderly, lewd, or obscene.~~

~~(17) Breach of the peace.~~

~~(18) Discriminatory action)) (10) Alcohol, drug, and tobacco violations.~~

~~(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.~~

~~(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, or windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.~~

(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) Discriminatory conduct. Conduct which harms or adversely affects any ~~((student or college employee))~~ member of the college community because of ~~((his/her race,))~~ their race; color((:)); national origin((:)); sensory, mental, or physical disability((:)); use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation((: age, creed, or religion.

(19) Sexual violence. ~~Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.~~

(20) Sexual harassment. ~~Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.~~

(21) Other harassment. ~~Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification.)); gender identity; veteran's status; or any other legally protected classification.~~

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-330 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. "Sexual violence" is a type of discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however

slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is

physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

((22)) (15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) Misuse of electronic resources. Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

((23)) (17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

((24) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(26)) (18) Safety violations. ((Safety violation includes any)) Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

((27)) (19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

((28)) (20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

((29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.))

In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-050 Disciplinary sanctions and terms and conditions. (1) The following disciplinary ((actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.

((1)) sanctions may be imposed upon students found to have violated the student conduct code.

(a) Disciplinary warning((:)). A verbal statement to a student that there is a violation, and that continued violation may be cause for further disciplinary action.

((2)) (b) Written reprimand((:)). Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

((3)) (c) Disciplinary probation((:)). Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student, subject to a deferred disciplinary sanction,

is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction(s) or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. ~~((A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

~~(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.~~

~~(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.~~

~~(4)) (d) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(e) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanctions include, but are not limited to, the following:~~

~~(a) Restitution(=:). Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.~~

~~((5) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(6)) (b) Professional evaluation(=:). Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.~~

~~((7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.~~

~~A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.~~

~~(9)) (c) Not in good standing. A student may be deemed "not in good standing" with the college. If so, that student shall be subject to the following restrictions:~~

~~(i) Ineligible to hold any office in any student organization recognized by the college or to hold any elected or appointed office of the college.~~

~~(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.~~

~~(d) No contact order(=:). An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.~~

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-060 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

~~(a) On Bellingham Technical College premises and facilities(=:to conduct that occurs);~~

~~(b) At or in connection with college-sponsored activities(=:or to off-campus conduct that); or~~

~~(c) Off-campus, and which, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.~~

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from ~~((the time of application for admission))~~ notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-065 Statement of purpose. (1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any

other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct ~~((himself or herself))~~ themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-070 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing ~~((him or her))~~ them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting ~~((his or her))~~ their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC ~~((495B-121-040))~~ 495B-121-255;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-080 Appeal from disciplinary action.

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten business days of service ~~((to))~~ of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding(=

(a) ~~Suspensions of ten instructional days or less;~~

(b) ~~Disciplinary probation;~~

(c) ~~Written reprimands; and~~

(d) ~~Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions))~~ subject to the procedures outlined in WAC 495B-121-275 through 495B-121-285.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of disciplinary decisions shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the ~~((agency's))~~ college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon ~~((both of the parties))~~ the respondent and the student conduct officer within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((twenty-one))~~ ten business days of service~~((s))~~ of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided ~~((the respondent))~~ a party files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten business days of service of the initial decision.

(2) The president shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give ~~((each party))~~ all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served

on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-110 Student conduct committee. (1)

The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrative staff member appointed on a yearly basis shall serve as the chair of the committee and may ~~((take action))~~ act on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness~~((;))~~; in which they have direct or personal interest, prejudice, or bias~~((;))~~; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425 (4).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-120 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW~~((, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control))~~.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date~~((, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045))~~. The chair may shorten this notice period if both parties agree, and ~~((also))~~ may also continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions

concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) ~~((Upon request,))~~ If a request for a document exchange is filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of ((his/her)) their choice. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ((his or her)) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-125 Student conduct appeals committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ~~((he/she))~~ they select~~((s))~~, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-130 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within ~~((twenty))~~ ten business days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by ~~((the respondent))~~ a party, the

committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-135 Appeal from student conduct committee initial decision. (1) A ~~((respondent))~~ party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten business days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. If necessary, to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will ~~((normally))~~ be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within ~~((forty-five))~~ twenty-one business days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) ((The president may, at his or her discretion, suspend any disciplinary action and/or impose interim sanctions pending review of the merits of the findings, conclusions, and disciplinary actions imposed.)) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions

imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-140 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that ~~((his or her))~~ their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

~~((a) The hearing will be conducted as a brief adjudicative proceeding.)~~

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the ~~((student))~~ respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(g) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))~~

NEW SECTION

WAC 495B-121-275 Brief adjudicative proceedings authorized. This chapter is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any condition or term imposed in conjunction with one of the foregoing disciplinary actions;

(e) Summary suspensions; and

(f) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

WAC 495B-121-290 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing

officer for any review. These records shall be maintained as the official record of the proceedings.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-325 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-320, these supplemental procedures shall take precedence.

NEW SECTION

WAC 495B-121-330 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 495B-121-335 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495B-121-230 through 495B-121-320.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or

part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 495B-121-340 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the Title IX hearing committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495B-121-345 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-300. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 495B-121-350 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-320 and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the

respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495B-121-355 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495B-121-360 Initial order. (1) In addition to complying with WAC 495B-121-310 the Title IX hearing committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495B-121-365 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-315.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
495B-121-010	495B-121-245
495B-121-020	495B-121-230
495B-121-030	495B-121-250
495B-121-040	495B-121-255
495B-121-050	495B-121-260
495B-121-060	495B-121-235
495B-121-065	495B-121-240
495B-121-070	495B-121-265
495B-121-080	495B-121-270
495B-121-090	495B-121-280
495B-121-100	495B-121-285

495B-121-110	495B-121-295
495B-121-120	495B-121-300
495B-121-125	495B-121-305
495B-121-130	495B-121-310
495B-121-135	495B-121-315
495B-121-140	495B-121-320

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495B-121-150 Supplemental sexual misconduct—Procedures.
- WAC 495B-121-160 Supplemental sexual misconduct—Definitions.
- WAC 495B-121-170 Supplemental complaint process.
- WAC 495B-121-180 Supplemental appeal rights.
- WAC 495B-121-190 Brief adjudicative proceedings authorized.
- WAC 495B-121-200 Brief adjudicative proceedings—Agency record.

**WSR 20-19-097
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed September 17, 2020, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-146 on August 5, 2020.

Title of Rule and Other Identifying Information: Ocean salmon troll and recreational fishing regulations, the department is considering reorganizing rules with new WAC numbers and amending current rules as follows:

New Sections: Chapter 220-306 WAC, Fish—Salmon control zones; WAC 220-306-001 Cape Flattery Control Zone, 220-306-002 Salmon Troll Yelloweye Rockfish Conservation Area, 220-306-003 Grays Harbor Control Zone, 220-306-004 Columbia River Control Zone, and 220-313-075 Pacific Ocean Salmon.

Amendments: WAC 220-313-010 Salmon statewide rules, 220-313-020 Closed areas—Saltwater salmon angling, 220-313-070 Coastal salmon—Saltwater seasons and daily limits, 220-350-220 Definitions—Troll line, 220-350-230 Definitions—Troll spread, and 220-354-300 Coastal salmon troll seasons—Commercial.

Hearing Location(s): On October 27, 2020, at 9:00 a.m. Webinar and/or conference call. This meeting will take place by webinar and/or conference call. The public may participate in the meeting. Visit our website at <https://wdfw.wa.gov/about/regulations/development#pending-rule-making> for instructions on how to join the meeting.

Date of Intended Adoption: November 2, 2020.

Submit Written Comments to: Michele Culver, Washington Department of Fish and Wildlife (WDFW) Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, email Rules.Coordinator@dfw.wa.gov, by October 21, 2020, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by October 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are designed to align better with the Pacific Fishery Management Council (PFMC) process and annual North of Falcon salmon season setting process. Most of these regulations have been in effect for ten or more years, while others (e.g., fishing associated with the Leadbetter Point line) have only been in effect for about the past five years; however, the department's permanent rules for ocean salmon troll have not been revised since 2001 and the ocean salmon recreational rules are also out of date. Given the timing of the annual North of Falcon and PFMC processes, and the subsequent adoption of implementing regulations by the National Marine Fisheries Service (NMFS), WDFW typically opens the salmon troll and ocean recreational fisheries via emergency rules.

The purpose of the proposal is to update the department's ocean salmon troll and ocean salmon recreational fishing regulations for consistency with the NMFS federal regulations and reorganize them for clarity and understanding by the salmon troll fishery participants and recreating public.

Specifically, the proposed reorganization includes: (1) Having a discrete set of regulations just for the control zones and conservation areas closed to ocean salmon fishing; and (2) separating the ocean (i.e., Marine Areas 1-4) recreational salmon fishing regulations from the broader "coastal recreational salmon" regulations, which includes Willapa Bay (Area 2-1) and Grays Harbor (Area 2-2). Annual regulations for these subareas 2-1 and 2-2 will continue to be developed and considered through the state's North of Falcon (NOF) process with the intent of maintaining consistency with Marine Area 2 (ocean) for the western portion of those areas.

Given that the season opening dates change annually and the timing of the NOF and PFMC processes and the NMFS regulatory process are not likely to change significantly, WDFW intends to continue to open both the salmon troll and ocean recreational fisheries via emergency rule.

It is also our intent to include in the permanent rules only those provisions that are not likely to be subject to annual changes. Provisions that are likely to be subject to annual changes, such as season dates and effective date of the Grays Harbor Control Zone, and items that have varied recently and may vary in the future (e.g., area-specific Chinook size limits) will continue to be addressed via emergency rule.

Reasons Supporting Proposal: These proposed rules were developed through the PFMC process, which is concurrent with and part of the broader NOF process, with meetings in early March and early April. Ocean fishery options are also analyzed and considered in light of potential Endangered Species Act (ESA)-listed species impacts and state/tribal har-

vest agreements and are also reviewed for consistency with the Pacific Salmon Treaty.

The annual NOF salmon season setting process is an extensive stakeholder engagement process that typically begins in January to develop and analyze various season options for recreational, commercial, and tribal fisheries for the current year. It is named "North of Falcon" as it includes setting the salmon seasons for the area north of Cape Falcon, Oregon, which is located at 45 degrees N. latitude.

The NOF process includes government-to-government meetings involving NMFS, treaty tribes, and WDFW representatives. Through the PFMC process, separate meetings are held with stakeholders, both at a statewide and regional level, to review preseason run size forecasts, NMFS guidance relative to allowable impacts for species listed under ESA, which includes salmon, but other protected species as well, such as Southern Resident Killer Whales, and develop ocean salmon fishing season options.

As noted above, WDFW typically opens the salmon troll and ocean recreational salmon fisheries via emergency rule and with the adoption of these proposed rules that process is not expected to change. Through those emergency rules, WDFW has included all of the long-standing regulations (e.g., control zones, restrictions and notification requirements regarding fishing north and south of Leadbetter Point) that were considered and approved through the NOF and PFMC processes and adopted by NMFS in federal regulations. This practice has essentially made our permanent rules for these fisheries obsolete and results in disparity between federal and state regulations outside of the fishing season, which can be misleading and cause confusion for individuals reviewing and comparing those rules. Further, including all of the long-standing regulations in the emergency rules is time consuming and may result in disparities between federal and state fishing regulations.

In summary, WDFW believes that updating our permanent rules to include all of the long-standing regulations that are not likely to change: (1) Helps ensure consistency between federal and state regulations; (2) promotes greater understanding and predictably for the fishing public; (3) reduces work for staff who develop, review, and file the emergency rules; and (4) enhances enforcement of our regulations.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Beeghley, 48 Devonshire Road, Montesano, WA 98563, 360-249-1215; **Implementation:** Kyle Adicks, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2664; and **Enforcement:** Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required for this rule making.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) - This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

Explanation of exemptions: The department is exempt from the requirements of chapter 19.85 RCW because, while WDFW considers commercial fishers to be a "small business," these commercial fishing rules do not impose new direct costs of regulatory compliance. These rule changes clarify dates for anticipated open periods and areas for salmon fisheries, and legal gear requirements for those fisheries. There are no new anticipated professional services required to comply. Based on the department's analysis, the proposed rules do not require any new or additional equipment, supplies, labor, or administrative costs.

September 17, 2020
Michele K. Culver
Rules Coordinator

Chapter 220-306 WAC

FISH—SALMON CONTROL ZONES

NEW SECTION

WAC 220-306-010 Cape Flattery Control Zone. This area is defined as the area from Cape Flattery (48°23'00"N. lat.) to the northern boundary of the U.S. Exclusive Economic Zone; and the area from Cape Flattery extending south to Cape Alava (48°10'00"N. lat.) that is east of 125°05'00"W. long.

NEW SECTION

WAC 220-306-020 Salmon Troll Yelloweye Rockfish Conservation Area. This area is defined as: Beginning at 48°00.00'N. lat., 125°14.00'W. long.; thence to 48°02.00'N. lat., 125°14.00'W. long.; thence to 48°02.00'N. lat., 125°16.50'W. long.; thence to 48°00.00'N. lat., 125°16.50'W. long.; thence to the point of origin.

NEW SECTION

WAC 220-306-030 Grays Harbor Control Zone. This area is defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.).

NEW SECTION

WAC 220-306-040 Columbia River Control Zone. This area is at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red

lighted Buoy #4 (46°13'35"N. lat., 124°06'50"W. long.) and the green lighted Buoy #7 (46°15'09"N. lat., 124°06'16"W. long.); on the east by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00"N. lat., 124°03'07"W. long. to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48"N. lat., 124°05'20"W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03"N. lat., 124°04'05"W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-313-010 Salmon statewide rules. (1) In fresh water (~~and in Marine Areas 2-1 and 2-2 east of the Buoy 13 line~~):

- (a) Adult salmon are defined as:
 - (i) Chinook over 24 inches in length;
 - (ii) Coho over 20 inches in length;
 - (iii) Pink, chum or sockeye over 12 inches in length; and
 - (iv) Atlantic salmon of any size.

(b) In these waters the minimum size for salmon is 12 inches, except no minimum size for Atlantic salmon.

(2) In (~~Marine Areas 1 through 4, in~~) Area 2-1 from the opening date of adjacent ocean waters through (~~August 15~~) July 31, and in Area 2-2 west of the Buoy 13 line, (~~Chinook salmon must be not less than 24 inches in length, coho salmon must be not less than 16 inches, but there is no minimum size on other salmon~~) the size limits specified for Marine Area 2 in WAC 220-313-075 apply.

(3) In Marine Areas 5 through 13, Chinook salmon must be not less than 22 inches in length, except in waters listed in this subsection, but there is no minimum size for other salmon.

(a) Marine Area 12 south of Ayock from July 1 through September 30: Chinook salmon must be not less than 20 inches in length.

(b) Marine Area 12 Hoodspout Hatchery Zone from July 1 through December 30: No minimum size for Chinook.

(4) The salmon possession limit shall not exceed the equivalent of two daily limits in fresh form. An additional 40 pounds of salmon may be possessed in frozen or processed form.

(5) In all areas where the daily limit allows adult salmon to be taken, it is unlawful to continue to fish for salmon after the adult portion of the daily limit has been retained.

(6) Where landlocked salmon rules apply, no sport catch record card is required for salmon, the season, daily limit, and size and gear restriction rules for salmon are the same as trout rules. The angler's combined catch of landlocked salmon and trout applies toward the trout limit.

AMENDATORY SECTION (Amending WSR 17-16-109, filed 7/28/17, effective 8/28/17)

WAC 220-313-020 Closed areas—Saltwater salmon angling. The following areas are closed to salmon angling during the times indicated:

(1) Bellingham Bay: Those waters of Bellingham, Samish, and Padilla Bays, easterly of a line from Sandy Point to the northern most point of Lone Tree Island, thence easterly of a line from Lone Tree Island to the northeast point of Sinclair Island, thence from the southeastern most point on Sinclair Island to Clark Point on Guemes Island, thence following the shoreline to Yellow Bluff on the southwest corner of Guemes Island, thence to Yellow Bluff Reef range marker, thence to the ferry terminal dock east of Shannon Point and north of the Burlington Railroad Bridges at the north end of Swinomish Slough: Closed to salmon angling March 1 through April 30 and July 1 through August 15.

(2) Carr Inlet: Those waters of Carr Inlet within 1,000 feet of the outer oyster stakes at the mouth of Minter Creek: Closed to salmon angling April 16 through September 30.

(3) Dungeness Bay: Those waters westerly of a line from Dungeness Spit Light to the number 2 red Buoy, and then to the Port Williams boat ramp: Closed to salmon angling July 1 through August 15 and March 1 through April 15.

(4) Samish Bay: Those waters southerly of a line projected true east from Fish Point: Closed to salmon angling March 1 through April 30 and July 1 through September 30.

(5) ~~Columbia River Mouth Control Zone 1: Washington waters within Control Zone 1, which Control Zone is described as an area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N/124°06'50" W) and the green lighted Buoy #7 (46°15'09" N/124°06'16" W); on the east by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N/124°03'07" W to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N/124°05'20" W), and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03" N/124°04'05" W), and then along the south jetty to the point of intersection with the Buoy #10 line: Closed to salmon angling at all times, except open to fishing from the north jetty when adjacent waters north of the Control Zone are open to salmon angling, or when the Buoy 10 fishery is open.~~

(6)) Commencement Bay: Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay: Closed to salmon angling April 1 through April 30 and June 1 through July 31.

((7)) (6) Southern Rosario Strait and the eastern Strait of Juan de Fuca: Waters of Area 7 in Rosario Strait and the eastern portion of the Strait of Juan de Fuca southerly of a line running true south from the westernmost point on Fidalgo Head to Burrows Island, then westerly and southerly along the shore of Burrows Island to the Burrows Island Lighthouse, then to Bird Rocks, then westerly from Bird Rocks to the southernmost point on Decatur Island, then

across Lopez Pass to Lopez Island and following the shore of Lopez Island southerly and westerly to Iceberg Point, then from Iceberg Point to Cattle Point, then south-southwest to the Salmon Bank Buoy, and then true south from the Salmon Bank Buoy to the Area 7 boundary: Closed to salmon angling July 1 through September 30.

((8)) (7) Kydaka Point - Waters south of a line from Kydaka Point to Shipwreck Point - Closed to salmon angling ((May 31)) June 1 through October 31.

((9)) (8) Port Angeles Harbor - Waters westerly of a line from the tip of Ediz Hook to the I.T.T. Rayonier Dock: Closed to salmon angling from July 1 through August 15.

((10)) (9) Violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380((7)) Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370((7)) Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

AMENDATORY SECTION (Amending WSR 20-14-052, filed 6/25/20, effective 7/26/20)

WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits. ((+)) It is unlawful to take, fish for, or possess salmon taken by angling for personal use except from the following coastal areas, during the following seasons, in the quantities and the sizes provided for in WAC 220-313-010, and for the species designated in this section. An area is open when a daily limit is provided:

- ((2) **Catch Record Card Area 1:**
- (a) May 1 through June 19: Closed.
 - (b) Open June 20 through June 28:
 - (i) Daily limit 1 salmon.
 - (ii) Release all coho.
 - (iii) Chinook minimum length 22 inches.
 - (c) Open June 29 through September 30:
 - (i) Daily limit 2 salmon; no more than 1 may be a Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (d) October 1 through April 30: Closed.
 - (e) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.
- (3) **Catch Record Card Area 2:**
- (a) May 1 through June 19: Closed.
 - (b) Open June 20 through June 28:
 - (i) Daily limit 1 salmon.
 - (ii) Release all coho.
 - (iii) Chinook minimum length 22 inches.
 - (c) Open June 29 through September 30; Sundays through Thursdays only (closed Fridays and Saturdays):
 - (i) Daily limit 2 salmon; no more than 1 may be a Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 22 inches.
 - (iv) Beginning August 10, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone—The area

defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude):

~~(d) October 1 through April 30: Closed.~~

~~(4)) (1) Willapa Bay (Catch Record Card Area 2-1):~~

~~(a) ((May 1 through June 19): Closed.~~

~~(b) June 20 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.~~

~~(c) Open August 1 through January 31:~~

~~(i) Daily limit 6 salmon; up to 2 may be adult salmon.~~

~~(ii) Release wild Chinook.~~

~~(iii)) Open concurrent with Area 2 as specified in WAC 220-313-075; otherwise closed, except as described in (b) of this subsection.~~

(b) Beginning August 1, the Willapa Bay Control Zone is open. The Willapa Bay Control Zone area is defined as waters east of a line drawn from Leadbetter Point (46°39.20'N, 124°3.516'W) due west to 46°39.20'N, 124°5.3'W then due north to the westerly most landfall on Cape Shoalwater (46°44.66'N, 124°5.3'W) and west from a line drawn from Leadbetter Point (46°39.20'N, 124°3.516'W) through green marker 11 to landfall.

~~((i+))~~ (c) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

~~((+))~~ (d) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed August 1 through September 30.

~~((d) February 1 through April 30: Closed.~~

~~(5)) (2) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):~~

(a) Humptulips North Bay Fishery is defined as northerly of a line running from the south end of the eastern jetty at Ocean Shores Marina, then to a fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) then to the Tripod Station located at 46°59.12'N, 124°00.72'W on Brackenridge Bluff.

(i) May 1 through July 31: Closed.

(ii) Open August 1 through September 15:

(A) Daily limit 1 salmon.

(B) Release wild Chinook and wild coho.

(b) East Grays Harbor Fishery is defined as easterly of a projected line from the mouth of Johns River (Highway 105 bridge) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green).

(i) Open September 23 through November 30:

(A) Daily limit 1 salmon.

(B) Release Chinook.

(ii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) and waters west of a line running from the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green) to the mouth of Johns River (Highway 105 Bridge): Closed.

(c) Notwithstanding the provisions of this subsection, the Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 through January 31:

(i) Daily limit 6 salmon; up to 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

~~((6))~~ (3) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line): ~~((a) May 1 through June 19: Closed.~~

~~(b) June 20 through August 9: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.~~

~~(c) August 10 through April 30: Closed.~~

~~(7) Catch Record Card Area 3:~~

~~(a) May 1 through June 19: Closed.~~

~~(b) Open June 20 through June 28:~~

~~(i) Daily limit 1 salmon.~~

~~(ii) Release all coho.~~

~~(c) Open June 29 through September 30:~~

~~(i) Daily limit 2 salmon.~~

~~(ii) Release wild coho.~~

~~(iii) Release chum salmon beginning August 1.~~

~~(d) October 1 through April 30: Closed.~~

~~(8) Catch Record Card Area 4:~~

~~(a) Waters east of a true north-south line through Sail Rock are closed through July 31.~~

~~(b) May 1 through June 19: Closed.~~

~~(c) June 20 through June 28:~~

~~(i) Daily limit 1 salmon.~~

~~(ii) Release all coho.~~

~~(d) Open June 29 through September 30:~~

~~(i) Daily limit 2 salmon.~~

~~(ii) Release wild coho.~~

~~(iii) Waters east of the Bonilla-Tatoosh line closed to Chinook retention beginning August 1.~~

~~(iv) Release chum salmon beginning August 1.~~

~~(e) October 1 through April 30: Closed.~~

~~(9)) Open concurrent with Area 2 as specified in WAC 220-313-075.~~

(4) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380((3)) Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370((3)) Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

NEW SECTION

WAC 220-313-075 Pacific Ocean Salmon—Seasons—Closed Areas. (1) It is unlawful to take, fish for, or possess salmon taken for personal use in Pacific Ocean waters except as provided for in this section:

(a) Marine Area 1: Closed except as provided by emergency rule. Closed in the Columbia River Control Zone during all open periods. See WAC 220-306-040.

(b) Marine Area 2: Closed except as provided by emergency rule. Closed in the Grays Harbor Control Zone, unless provided by emergency rule. See WAC 220-306-030.

(c) Marine Area 3: Closed except as provided by emergency rule.

(d) Marine Area 4: Closed except as provided by emergency rule. Closed in Marine Area 4 waters south of a line from Kydaka Point to Shipwreck Point.

(2) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-350-220 Definitions—Troll line. "Troll line" when relating to its use for commercial purposes shall be defined as a ~~((fishing))~~ line used to drag a ~~((lure or lures))~~ hook or hooks behind a moving fishing vessel that is ((under power)) making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions. The troll line must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-350-230 Definitions—Troll spread. "Troll spread" shall be defined as a ~~((readily detachable line more than 4 inches in length, which has one or more lures attached to it, and is attached to the main troll line which cannot be removed from the vessel during its operation))~~ single leader connected to the troll line and to an individual lure and/or bait.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-354-300 Coastal salmon troll seasons—Commercial. It is unlawful to take, fish for, or possess salmon taken with troll gear in Pacific Ocean waters or to land salmon taken with troll gear from Pacific Ocean waters into a Washington port except ((during the seasons provided for in this section.

(1) SMCRA 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open May 1, 2001, and remain open through June 30, 2001, or until the chinook quota is taken. Unlawful to retain coho. No more than 4 spreads per line beginning June 1. Cape Flattery and Columbia River Control Zones closed.

(2) SMCRA 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open July 1, 2001, and remains open through July 27, 2001, or until the chinook or coho quotas have been taken. Unlawful to retain wild coho. Gear is restricted to plugs with a plug body length of six inches or greater, and no more than 4 spreads per line. Cape Flattery Control Zone closed.

~~(3) SMCRA 1 opens July 20, 2001, and remains open through September 30, 2001, or until the chinook or coho quotas have been taken. Unlawful to retain wild coho. Columbia River Commercial Control Zone closed.~~

~~(4) SMCRA 2 south of the Queets River opens July 28, 2001 or upon closure of the fishery provided for in subsection (2) of this section, and remains open concurrent with the fishery provided for in subsection (3) of this section.~~

~~(5) In all fisheries provided for in this section, chinook minimum size 28 inches and coho minimum size 16 inches)) as provided by emergency rule.~~

~~(1) Closed in Salmon Control Zones defined in chapter 220-306 WAC except as provided in emergency rule.~~

~~(2) Minimum size limits for Chinook and coho will be specified in emergency rule. No minimum size for pink, sockeye or chum salmon.~~

~~((6) Lawful troll gear is restricted to)) No chum retention north of Cape Alava (48°10'00" N. lat.) beginning August 1 continuing through September 30.~~

~~(3) Salmon may be taken only by hook and line using single point, single shank, barbless hooks.~~

~~((7) It is unlawful for any fisher taking salmon north of the Queets River to fail to land the salmon north of the Queets River and west of Sekiu, or to fail to notify the department before leaving the area. Notification must be made by calling the department at 360-902-2739, and reporting the name of fisher and boat, the area fished, the day leaving the area, and the port of destination.~~

~~(8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and must land within the SMCRA fished, or within an adjacent SMCRA closed to all citizen troll fishing.~~

~~(9) The Cape Flattery Commercial Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W longitude.~~

~~(10) The Columbia River Commercial Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. latitude, 124°06'50" W. longitude) and the green lighted Buoy #7 (46°15'09" N. latitude, 124°06'16" W. longitude); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. latitude, 124°03'07" W. longitude to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. latitude, 124°05'20" W. longitude) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. latitude, 124°04'05" W. longitude), and then along the south jetty to the point of intersection with the Buoy #10 line.~~

~~(11) Vessels intending to land their catch taken south of Cape Falcon into a Washington port must notify WDFW before traveling north of Cape Falcon by calling 360-902-2181 and report the name of the vessel, the intended port of landing, the estimated time and date of arrival and the catch aboard.)) (4) It is unlawful for a vessel to have troll or recre-~~

ational gear in the water while in any area closed to fishing for certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

(5) Salmon may not be filleted prior to landing.

(6) Vessels must land and deliver their salmon within twenty-four hours of any closure of this fishery.

(7) All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than forty-eight hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than forty-eight hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught.

(8) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of the Megler-Astoria bridge.

(9) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

public health emergency, the department of health (DOH) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space will be held instead.

To access the meeting: Please join meeting from your computer, tablet or smartphone: <https://global.gotomeeting.com/join/246294429>. You can also dial in using your phone: United States: +1 (872) 240-3212. Access Code: 246-294-429.

New to GoToMeeting? Get the app now and be ready when your first meeting starts: <https://global.gotomeeting.com/install/246294429>.

Date of Intended Adoption: November 4, 2020.

Submit Written Comments to: Bruce Bronoske, Jr., Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4901, bruce.bronoske@doh.wa.gov, by October 28, 2020.

Assistance for Persons with Disabilities: Contact Bruce Bronoske, Jr., phone 360-236-4843, fax 360-236-4901, TTY 771 [711], email bruce.bronoske@doh.wa.gov, by October 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DOH (department) proposes new rules to implement HB 1177. This bill created a dental laboratory registration within the department. The bill establishes minimum standards for dental laboratories, and instructs the department to register and assign registration numbers for dental laboratory registrations, and establish fees.

The department will maintain a registration database for dental laboratories and is proposing rules that establish standards for denial of a registration and disciplinary action. The proposed rules also establish fees for registration. The proposed rules restate the requirements in the statute for background and continuity, and provide clarity as needed.

Reasons Supporting Proposal: The statute and proposed new rules will increase public safety by establishing minimum registration requirements for dental laboratories including fees. The proposed rules also clarify material disclosure requirements by mandating that the disclosures be provided in writing to the prescribing dentist. The goal of HB 1177 is to protect the safety of Washington residents, and the department proposes to achieve that goal through the establishment of this rule.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280; HB 1177 (chapter 68, Laws of 2019).

Statute Being Implemented: HB 1177 (chapter 68, Laws of 2019).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bruce Bronoske, Jr., 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4843.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

WSR 20-19-103
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed September 18, 2020, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-048.

Title of Rule and Other Identifying Information: Chapter 246-315 WAC, Dental laboratories, the department of health is creating a new chapter to establish registration, regulation, and fees for dental laboratories as required by HB 1177 (chapter 68, Laws of 2019).

Hearing Location(s): On October 28, 2020, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19)

contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504, phone 360-236-4843, fax 360-236-4901, TTY 711, email bruce.bronoske@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose costs on businesses.

September 17, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH

Secretary

Chapter 246-315 WAC

DENTAL LABORATORIES

NEW SECTION

WAC 246-315-001 Purpose. The purpose of these rules is to further clarify and define chapter 70.352 RCW, Dental laboratories.

NEW SECTION

WAC 246-315-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Responsible person" means an owner or employee who meets the requirements listed in RCW 70.352.050 (1) and (2).

(3) "Supervising dentist" means an individual licensed to practice dentistry pursuant to chapter 18.32 RCW, and who has personally authorized the procedures to be performed.

NEW SECTION

WAC 246-315-020 Registration required. As of January 31, 2021, each dental laboratory operating, doing business, or intending to operate or do business in this state must possess a current registration issued by the department, unless exempt under RCW 70.352.020(3) or 70.352.900.

NEW SECTION

WAC 246-315-030 Registration application requirements. An applicant for a dental laboratory registration shall submit to the department the following:

- (1) An application on forms provided by the department;
- (2) A verification that the dental laboratory meets the requirements listed in RCW 70.352.050;
- (3) An acknowledgment by the responsible person or supervising dentist who is licensed in this state attesting that the dental laboratory will provide written material disclosure to the prescribing dentist that contains the information required in RCW 70.352.030 (1)(e);
- (4) An acknowledgment by the responsible person or supervising dentist who is licensed in this state attesting that the dental laboratory will disclose in writing to the prescribing dentist the point of origin of the manufacture of each prescribed restoration as required in RCW 70.352.030 (1)(f); and
- (5) The fee required under WAC 246-315-990.

NEW SECTION

WAC 246-315-040 Denial of registration and disciplinary action. (1) Under RCW 70.352.070 and chapter 34.05 RCW the department may deny a registration to any applicant who does not comply with the requirements or standards listed in chapter 70.352 RCW or the rules adopted in this chapter.

(2) Pursuant to chapter 34.05 RCW, the department may impose conditions, suspend or revoke the registration of any dental laboratory which fails or refuses to comply with the requirements of chapter 70.352 RCW or the rules adopted in this chapter.

NEW SECTION

WAC 246-315-990 Registration renewal and fees. Dental laboratory registration fees, renewal requirements and renewal cycle.

(1) Registration must be renewed annually prior to July 31st of each year as provided in RCW 70.352.060.

(2) The department will renew the dental laboratory registration when the responsible person or supervising dentist submits:

- (a) A completed renewal form, provided by the department;
- (b) The designated renewal fee; and
- (c) A signed attestation verifying that the dental laboratory continues to meet the registration requirements listed in RCW 70.352.030 and 70.352.050(3).

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$250.00
Renewal	250.00
Late renewal penalty	125.00
Expired registration reissuance	125.00
Registration verification	25.00

Title of Fee	Fee
Duplicate registration	15.00

WSR 20-19-116
PROPOSED RULES
BELLEVUE COLLEGE
 [Filed September 21, 2020, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-123.

Title of Rule and Other Identifying Information: Revise chapter 132H-126 WAC, Student conduct code; Supplemental Title IX WAC 132H-126-400, 132H-126-410, 132H-126-420, 132H-126-430, 132H-126-440, 132H-126-450, 132H-126-460, 132H-126-470, and 132H-126-480. Amending WAC 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-140, 132H-126-160, 132H-126-170, 132H-126-200, 132H-126-210, 132H-126-300, 132H-126-310, 132H-126-320, 132H-126-330, and 132H-126-340.

Hearing Location(s): On Wednesday, October 28, 2020, at 4:30 - 5:30 p.m. Online at <https://bellevuecollege.zoom.us/j/84539847411>. Call in to +12532158782, 84539847411# US (Tacoma). Public hearing to be held remotely due to COVID-19.

Date of Intended Adoption: December 2, 2020.

Submit Written Comments to: Megan Kaptik, 3000 Landerholm Circle S.E., Bellevue College, WA 98007, email megan.kaptik@bellevuecollege.edu, phone 425-564-2757, by October 31, 2020.

Assistance for Persons with Disabilities: Contact Katelynn Creeley, phone 425-564-4159, TTY 425-564-6189, email Katelynn.creeley@bellevuecollege.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (34 C.F.R. § 106.30, § 106.44, § 106.45). The new regulations address the grievance process for formal complaints of sexual harassment. Bellevue College has added a supplementary Title IX complaint procedures to student conduct code to ensure that the code adequately addresses Title IX complaints. The revised code clarifies related misconduct definitions and language.

Reasons Supporting Proposal: The current student conduct code was revised in December 2019. In May 2020, the Department of Education released new Title IX regulations (34 C.F.R. § 106.30, 106.44, 106.45). To be compliant with these new regulations, the student grievance process for formal complaints of sexual harassment must meet specific expectations. The college added a supplementary Title IX complaint procedure and updated terminology and definitions in the existing student conduct code for consistency.

Statutory Authority for Adoption: RCW 28B.50.140 (13); chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.50.140(13); 34 C.F.R. § 106.30, 106.44, 106.45.

Rule is necessary because of federal law, 34 C.F.R. § 106.30, 106.44, 106.45.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Kaptik, Bellevue College U307B, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-2757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

September 18, 2020

Tracy Biga MacLean
Associate Director

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140, delegates to the president of Bellevue College the authority to administer student disciplinary action. Administration of the disciplinary procedures is the responsibility of the provost for academic and student affairs or designee and/or the designated student conduct officer. The student conduct officer shall serve as the principal investigator and administrator for ~~((alleged))~~ reported violations of this code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-040 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

(2) "**College official**" is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

(5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(6) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

(8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first class mail to the specified college official's college email and office address.

(9) **"Impacted party"** is a student or another member of the college community directly affected by an alleged violation of this student conduct code. The impacted party may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving an allegation of sexual misconduct as defined in this student conduct code, an impacted party is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is an impacted party;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.)

(10) **"Process advisor"** is a person selected by a (responding party or an impacted party) respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(11) **"(Responding party) Respondent"** is a student against whom disciplinary action is initiated. Each (respond-

ing party) respondent is afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;

(b) The right to be informed of all orders issued in the (responding party's) respondent's disciplinary case;

((b)) (c) The right to appeal a disciplinary decision; and

((c)) (d) The right to be accompanied by a process advisor.

(12) **"Service"** is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

(13) **"Sexual misconduct"** includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or ((relationship)) domestic violence.

(14) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw, graduate, or complete courses after the date of ((an alleged)) a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(15) **"Student conduct officer"** is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(16) **"The president"** is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

(3) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) **Cheating.** Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism.** Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. May also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((3))~~ **(4) Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the reasonable request or requirement of a college official or employee.

~~((4))~~ **(5) Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((5))~~ **(6) Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are

not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((6))~~ **(7) Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(8) Discriminatory harassment.

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((7))~~ **(9) Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((8))~~ **(10) Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((9))~~ **(11) Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the

domestic or family violence laws of the state of Washington, RCW 26.50.010.

(12) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(13) Failure to comply with directive. Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(14) Harassment or bullying. Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(15) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(16) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(17) Marijuana or other drugs.

(a) **Marijuana.** The use, possession, growing, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, or the possession of marijuana paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being under the influence of any prescription drug or possession of drug paraphernalia, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(18) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of computer time or resources to interfere with someone else's work;

(e) Use of computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of computer time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(19) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~**(17) Relationship violence.** The infliction of physical harm, bodily injury, assault, psychological harm, or the fear of imminent physical harm, bodily injury, or assault committed by:~~

~~(a) The impacted party's current or former spouse;~~

~~(b) Current or former cohabitant;~~

~~(c) A person with whom the person shares a child in common; or~~

~~(d) A person who has been in a romantic or intimate relationship with the impacted party. Whether such a relationship exists will be gauged by the length, type, and frequency of interaction.~~

(20) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported ~~(an alleged)~~ a violation of this code or college policy, provided information about ~~(an alleged)~~ a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(21) Safety violations. Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((20))~~ **(22) Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the ~~((responding party's))~~ respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (a) Invading another person's sexual privacy;
- (b) Prostituting another person;
- (c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;
- (f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or
- (g) Causing the nonconsensual indecent exposure of another person, as defined by subsection (13) of this section.

~~((21))~~ **(23) Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

- (a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;
- (b) Alter the terms or conditions of employment; or
- (c) Create an intimidating, hostile, or offensive environment for other campus community members.

~~((22))~~ For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

(24) Sexual violence. A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct

indicating freely given agreement to have sexual intercourse or sexual contact.

(v) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(b) Nonconsensual sexual intercourse. Any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(c) Nonconsensual sexual contact. Any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) Sexual coercion. Unreasonably pressuring another for sexual contact. When ~~((an impacted party))~~ a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

~~((23))~~ **(e) Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(f) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

~~((25))~~ **(25) Stalking.** ~~((Intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person.))~~ Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

~~((24))~~ **(26) Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. Related products include, but are not limited to, cigarettes,

pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((25))~~ **(27) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((26))~~ **(28) Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((27))~~ **(29) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((28))~~ **(30) Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions incorporated therein.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-120 Initiation of disciplinary action.

(1) Any member of the college community may file a complaint against a student for possible violations of the student conduct code.

(2) Upon receipt, a student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of ~~((alleged))~~ sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an

employee is either the ~~((impacted or responding party))~~ complainant or respondent.

(c) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

(d) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the ~~((impacted party))~~ complainant or other members of the college community.

(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the ~~((responding party))~~ respondent or through alternative dispute resolution proceedings involving the ~~((impacted party))~~ complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the ~~((impacted party))~~ complainant and the ~~((responding party))~~ respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the ~~((responding party))~~ respondent.

(a) Both the ~~((responding party))~~ respondent and the ~~((impacted party))~~ complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(b) The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the ~~((impacted party))~~ complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the ~~((responding party))~~ respondent if the allegations of sexual misconduct are found to have merit.

(5) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities.

(6) A student conduct officer shall initiate disciplinary action by serving the ~~((responding party))~~ respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the ~~((responding party is alleged))~~ respondent is reported to have violated, the range of possible sanctions for the ~~((alleged))~~ reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the ~~((responding party))~~

respondent, and the ~~((responding party))~~ respondent shall be afforded an opportunity to explain what occurred.

(c) If the ~~((responding party))~~ respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the ~~((responding party))~~ respondent, the student conduct officer shall serve the ~~((responding party))~~ respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the ~~((responding party))~~ respondent, and the ~~((impacted party))~~ complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the ~~((responding party))~~ respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the ~~((responding party))~~ respondent.

(9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the ~~((responding party))~~ respondent, will serve a written notice informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including disciplinary suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the ~~((impacted party))~~ complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-130 Appeal from disciplinary action. (1) The ~~((responding party))~~ respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the ~~((responding party))~~ respondent is seeking review.

(3) The parties to an appeal shall be the ~~((responding party))~~ respondent and the student conduct officer. If a case involves allegations of sexual misconduct, ~~((an impacted party))~~ a complainant also has a right to appeal a disciplinary decision or to intervene in the ~~((responding party's))~~ respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the ~~((responding party))~~ respondent.

(4) A ~~((responding party))~~ respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the ~~((responding party))~~ respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals regarding:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of ten instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(g) Appeals by ~~((an impacted party))~~ a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the ~~((responding party))~~ respondent.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the ~~((responding party))~~ respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a ~~((responding party))~~ respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the ~~((responding party))~~ respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the ~~((impacted party))~~ complainant of the appeal and provide the ~~((impacted party))~~ complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, ~~((an impacted party))~~ a complainant who timely appeals a disciplinary decision or who intervenes as a party to ~~((responding party's))~~ respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the ~~((responding party))~~ respondent.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-140 Conduct hold on student records. (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the ~~((responding party))~~ respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-160 Interim measures. (1) After receiving a report of ~~((alleged))~~ sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with ~~((an impacted party, a responding party))~~ a complainant, a respondent, a reporting party, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing;

(c) Changes to class schedules, assignments, or test schedules;

(d) Modified on-campus employment schedule or location;

(e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-170 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a ~~((responding party))~~ respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is reasonable basis to believe that the ~~((responding party))~~ respondent:

(a) Has violated a provision of the student conduct code; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any ~~((responding party))~~ respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the ~~((responding party))~~ respondent within two business days of the oral notice.

(4) The written notice shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law ~~((allegedly))~~ reportedly violated;

(b) The date, time, and location when the ~~((responding party))~~ respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the ~~((responding party))~~ respondent may physically access the campus or communicate with members of the campus community. If the ~~((responding party))~~ respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn and that the ~~((responding party))~~ respondent shall be considered to be trespassing and subject to arrest for criminal trespass if the ~~((responding party))~~ respondent enters the college campus. The ~~((responding student))~~ respondent may be authorized to access college premises for the limited purpose of meeting with the student

conduct officer, the conduct review officer, or to attend a disciplinary hearing. All such meetings and hearings shall be confirmed in writing in advance and the ~~((responding party))~~ respondent entering college premises shall be required to produce the written permission to a college official on request.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The ~~((responding party))~~ respondent shall be afforded an opportunity to explain why the summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the ~~((responding party))~~ respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the ~~((responding party))~~ respondent. The college will also provide the ~~((impacted party))~~ complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-200 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which they are ~~((an impacted party))~~ a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the parties within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and informa-

tion about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the matter is an appeal by the ~~((responding party))~~ respondent, or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the conduct review officer may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(5) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-210 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the ~~((responding party))~~ respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which they are ~~((an impacted party))~~ a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing, include a brief statement of the reasons for the decision and typically must be served on the parties within twenty days of the request for review. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted without a response from the president.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the ~~((responding party))~~ respondent, will serve a written notice upon the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-300 Student conduct committee. (1)

The student conduct committee shall consist of six members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) Two administrative staff members, other than an administrator serving as a student conduct or conduct review officer, appointed by the president prior to the beginning of the academic year for alternating two-year terms.

(2) One of the administrative staff members shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The administrative staff members shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member, one student, and one administrative staff member are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they:

(a) Are ~~((an impacted party))~~ a complainant or witness;

(b) Have direct or personal interest, prejudice, or bias; or

(c) Have acted previously in an advisory capacity.

(5) Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-310 Student conduct committee—

Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions

concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of: (a) The conduct officer's notice of discipline, or referral to the committee; and (b) the notice of appeal, or any response to referral, by the ~~((responding party))~~ respondent or, in a case involving allegations of sexual misconduct, the ~~((impacted party))~~ complainant. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the ~~((responding party))~~ respondent and ~~((impacted party))~~ complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) All parties may be accompanied at the hearing by a ~~((nonattorney))~~ process advisor of their choice.

(10) The ~~((responding party))~~ respondent, in all appeals before the committee, and the ~~((impacted party))~~ complainant, in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own expense. The ~~((responding))~~ respondent and/or ~~((impacted party))~~ complainant will be deemed to have waived the right to be represented by an attorney unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.

(11) The committee will ordinarily be advised by an assistant attorney general. If the ~~((responding party))~~ respondent and/or the ~~((impacted party))~~ complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-320 Student conduct committee—
Presentation of evidence. (1) Upon the failure of any party

to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving ~~((allegations))~~ reports of sexual misconduct, the ~~((responding and the impacted parties))~~ respondent and complainant shall not directly question or cross-examine one another. Attorneys for the ~~((responding and impacted parties))~~ respondent and complainant are also prohibited from directly questioning opposing parties absent express permission from the committee chair. Subject to this exception, all cross-examination questions by the ~~((responding and impacted parties))~~ respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-330 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the committee's receipt of closing arguments, whichever is later, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law,

including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanctions or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the ~~((responding party))~~ respondent or the ~~((impacted party))~~ complainant in the case of sexual misconduct, the committee may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanctions or conditions as authorized herein. The notice will also inform the ~~((responding party))~~ respondent of their appeal rights.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee will make arrangements to have a written notice served on the ~~((impacted party))~~ complainant informing the ~~((impacted party))~~ complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the ~~((responding party))~~ respondent, including suspension or dismissal of the ~~((responding party))~~ respondent. The notice will also inform the ~~((impacted party))~~ complainant of their appeal rights. This notice shall be served on the ~~((impacted party))~~ complainant on the same date as the initial decision is served on the ~~((responding party))~~ respondent. The ~~((impacted party))~~ complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-340 Student conduct committee—Review of an initial decision. (1) A ~~((responding party, or an impacted party))~~ respondent, or a complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may request a review of the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision or a written notice. Failure to file a timely appeal request within this time frame constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to those issues

and arguments raised in the notice of appeal. As part of the review process, the president may ask the nonappealing party(ies) to respond to the arguments contained in the notice of appeal.

(3) The president shall provide a written decision to all parties within thirty days after receipt of the notice of appeal or receipt of the response from nonappealing parties, whichever is later. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the ~~((responding party))~~ respondent, shall serve a written notice informing the ~~((impacted party))~~ complainant of the final decision. This notice shall inform the ~~((impacted party))~~ complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the ~~((responding party))~~ respondent for the ~~((impacted party's))~~ complainant's protection, including suspension or dismissal of the ~~((responding party))~~ respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132H-126-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132H-126-410 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132H-126-420 Title IX jurisdiction. (1) This supplemental procedure applies only if the reported misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the reported sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132H-126 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132H-126-430 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent, the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the reported Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the reported violation(s); and
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on their party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132H-126-440 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132H-126-310. In no event will the

hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132H-126-450 Rights of parties. (1) The student conduct code of Bellevue College, chapter 132H-126 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132H-126-460 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the reported misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has

effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132H-126-470 Initial order. (1) In addition to complying with WAC 132H-126-330, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132H-126-480 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132H-126-340.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 20-19-118
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 21, 2020, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-119.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?

Hearing Location(s): On October 27, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of Intended Adoption: Not earlier than October 28, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 27, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by October 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will decrease monthly SSP payments from \$40.00 to \$38.25 to supplemental security income (SSI) recipients who have an ineligible spouse, are age sixty five or older, or are blind. These changes are necessary to maintain the yearly total amount of SSP expenditures at the same level each calendar year. Proposed amendments will also clarify the SSP rate paid to SSI recipients in medical institutions.

Reasons Supporting Proposal: Federal law requires the department to maintain the total amount of SSI state supplement[al] benefit spending at the same level each calendar year, without an increase or decrease in total spending.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Olga Walker, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4641.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "This section does not apply to ... rules of the department of social and

health services relating only to client medical or financial eligibility ...".

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

September 18, 2020
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-24-032, filed 11/28/18, effective 1/1/19)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state to certain SSI eligible people as described in WAC 388-474-0012.

(2) If you converted to the federal SSI program from state assistance in January 1974 because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a minimum income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA), or federal benefit rate (FBR) can affect a grandfathered MIL client. A grandfathered MIL client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal COLA since then; or

(b) The current payment standard.

(3) The monthly SSP rate standards for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Standard
Individual (aged 65 and older)	(\$40.00) <u>\$38.25</u>
Individual (blind as determined by SSA)	(\$40.00) <u>\$38.25</u>
Individual with an ineligible spouse	(\$40.00) <u>\$38.25</u>
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.

Medical institution	Monthly SSP Rate
Individual	\$40.00

(4) We may adjust the SSP rate standards at the end of the calendar year to comply with WAC 388-478-0057.

(5) The medical institution SSP rate is based on increasing the federal SSI personal needs allowance (PNA) up to the current Washington state institutional PNA standard described in WAC 182-513-1105. The state rate may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors and disability social security recipients as published by the federal social security administration. This adjustment is subject to state legislative funding. The current PNA rule used in institutional apple health is located at <https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources>.

WSR 20-19-123

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed September 22, 2020, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-107.

Title of Rule and Other Identifying Information: WAC 468-16-180 Suspension of qualification.

Hearing Location(s): On November 5, 2020, at 2:30 p.m., at Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Denys Tak, 310 Maple Park Avenue S.E., Olympia, WA 98504, email DOTConstruction@wsdot.wa.gov, by November 2, 2020.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email Engleka@wsdot.wa.gov, by November 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 468-16 WAC creates the rules for prequalification of contractors for highway construction contracts required by RCW 47.28.070. This revision involves adding new grounds for suspending a contractor's prequalification.

Reasons Supporting Proposal: Ensuring that contractors on Washington state department of transportation (WSDOT) projects are meeting the requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030, 47.28.070.

Statute Being Implemented: RCW 47.01.101, 47.28.030, 47.28.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDOT, construction division, governmental.

Name of Agency Personnel Responsible for Drafting: Denys Tak, 310 Maple Park Avenue S.E., Room 2D05, Olympia, WA 98504, 360-705-7833; Implementation and Enforcement: Jenna Fettig, 310 Maple Park Avenue S.E., Room 2D20, Olympia, WA 98504, 360-705-7017.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. WSDOT is not a listed agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 468-16 WAC pertains to the process of pre-qualifying contractors to bid on WSDOT contracts. No changes were made to the WAC that would affect the cost or time for businesses to comply with the rule.

September 21, 2020

Shannon Gill, Interim Director
Risk Management and Legal Services

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

WAC 468-16-180 Suspension of qualification. (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may immediately suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity, women's, minority and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity, women's, minority, and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(i) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with all requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

(j) Repeated findings of noncompliance (two or more) with the requirements set forth in subsection (3)(i) of this section.

(4) The periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(e) For subsection (3)(i) of this section - A minimum of one year.

(f) For subsection (3)(j) of this section - A minimum of two years.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Elimination of causes for which the suspension was imposed.

WSR 20-19-124

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed September 22, 2020, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-037.

Title of Rule and Other Identifying Information: Alternative fuel vehicle charging and refueling infrastructure program.

Hearing Location(s): On November 5, 2020, at 2:50 p.m., at Transportation Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Tonia Buell, WSDOT Innovative Partnerships, P.O. Box 47395, Olympia, WA 98504-7395, email partnerships@wsdot.wa.gov, by October 27, 2020.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email Engleka@wsdot.wa.gov, by November 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature finds that increasing the rate of adoption of electric vehicles and vessels and other clean alternative fuel vehicles will help to reduce harmful air pollution from exhaust emissions, including greenhouse gas emissions, in the state. The legislature further finds that support for clean alternative fuel infrastructure can help to increase adoption of green transportation in the state. RCW 47.04.350 expands the electric vehicle infrastructure program to include hydrogen refueling stations so the rules must be amended to include the additional alternative fuel type.

Reasons Supporting Proposal: The legislature finds that increasing the rate of adoption of electric vehicles and vessels and other clean alternative fuel vehicles will help to reduce harmful air pollution from exhaust emissions, including greenhouse gas emissions, in the state. The legislature further finds that support for clean alternative fuel infrastructure can help to increase adoption of green transportation in the state. RCW 47.04.350 expands the electric vehicle infrastructure program to include hydrogen refueling stations so the rules must be amended to include the additional alternative fuel type.

Statutory Authority for Adoption: RCW 47.04.350.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Tonia Buell, Olympia, Washington, 360-705-7439; Implementation and Enforcement: Anthony Buckley, Olympia, Washington, 360-705-7039.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules explain how the department will implement and administer the program. The program is designed to result in a positive economic impact for small businesses.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

September 21, 2020

Shannon Gill, Interim Director
Risk Management and Legal Services

Chapter 468-602 WAC

~~((ELECTRIC))~~ ALTERNATIVE FUEL VEHICLE CHARGING AND REFUELING INFRASTRUCTURE ~~((PILOT))~~ PROGRAM

AMENDATORY SECTION (Amending WSR 16-21-092, filed 10/19/16, effective 11/19/16)

WAC 468-602-010 Authority and purpose. RCW 47.04.350 directs the Washington state department of transportation public-private partnership office to develop and maintain a ~~((pilot))~~ program to support the deployment of ~~((electric vehicle charging))~~ alternative fuel vehicle charging and refueling infrastructure that is supported by private financing.

The ~~((pilot))~~ program ~~((will))~~ consists solely of projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions or otherwise increase energy independence for the

state. The department refers to the program as the zero emission vehicle infrastructure partnerships (ZEVIP) program.

~~((Funds will be available for))~~ Program funds are invested in the deployment of electric vehicle ~~((fast-charging))~~ charging and hydrogen refueling stations at key ~~((locations))~~ intervals along state and federal highway corridors to support interurban, interstate, and interregional travel for clean alternative fuel vehicles. Funds may be used as match to leverage federal funds for the sole purpose of installing, maintaining, and operating electric vehicle charging and hydrogen refueling infrastructure.

AMENDATORY SECTION (Amending WSR 16-21-092, filed 10/19/16, effective 11/19/16)

WAC 468-602-020 Definitions. Bidder: Nonprofit organizations and government agencies including, but not limited to, federal, state and local public agencies such as cities, counties, municipal corporations, special purpose districts, tribes, ports, air quality districts, public utility districts, transit systems, and regional organizations serving areas adjacent to highway corridors.

Clean alternative fuel vehicles: Vehicles that are powered by electricity including plug-in electric vehicles (PEV) that are capable of drawing electricity from off-board electrical power sources and storing it in batteries and fuel cell electric vehicles (FCEV) that use hydrogen to generate electricity onboard the vehicles. These vehicles are also known as zero emission vehicles (ZEV).

Clean alternative fuel vehicle charging and refueling infrastructure: Products or assemblies installed for the purpose of safely delivering and managing the transfer of electrical energy from an electrical source to an electric vehicle or for refueling hydrogen fuel cell vehicles. Infrastructure may include structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, storage or filling stations for hydrogen intended to refuel fuel cell electric vehicles, and renewable hydrogen production facilities.

Corridor: A state or federal highway and interconnected streets connecting communities or destinations and serving major sources of vehicular travel within the state of Washington.

Department: Washington state department of transportation.

~~((charging station: Products or assemblies installed for the purpose of safely delivering and managing the transfer of electrical energy from an electrical source to an electric vehicle))~~ (EV): Plug-in electric vehicles (PEV) that are recharged from the electrical grid including battery electric vehicles (BEV) that run entirely on electricity and plug-in hybrid electric vehicles (PHEV) that run partially on electricity.

Fuel cell electric vehicles (FCEV): Vehicles that run on electricity produced from an onboard fuel cell using hydrogen and that emit zero tailpipe emissions except for warm air and water vapor.

Eligible project or project: The installation of one or more ~~((electric))~~ clean alternative fuel vehicle charging or

refueling stations along a corridor within the state of Washington. Projects may include upgrades and improvements that expand access to existing charging or refueling sites.

Indirect value: Benefits of the project that may accrue to project participants other than for the use of the ~~((charging))~~ equipment.

Industry standard electric vehicle charging equipment: ~~((Nonproprietary)) Nonproprietary~~ electric vehicle supply equipment (EVSE) that meets the common standards used for most mass-produced makes and models of plug-in electric vehicles sold in North America including, but not limited to, CHAdeMO, SAE CCS, and SAE J1772.

Industry standard hydrogen fuel cell vehicle refueling equipment: Equipment and infrastructure that is designed, installed, and maintained as required by the existing recognized national codes and standards for refueling hydrogen fuel cell vehicles.

Nationally recognized interval targets: Meets or exceeds criteria provided by the Federal Highway Administration Alternative Fuel Corridors designation program for corridor-ready infrastructure coverage including the number of miles between one station/site and the next along the corridor and the proximity to the highway.

Owner-operator: An entity involved in installing ~~((and)),~~ operating, and maintaining charging and/or refueling equipment including, but not limited to, dedicated clean alternative fuel vehicle charging and refueling service companies, ~~((charging))~~ equipment manufacturers, property owners ~~((acting))~~ serving as site hosts, automakers, electric utilities, electricity generators, and state and local governments.

Private sector partner: An entity contributing to the project who stands to gain indirect value from development of the project including, but not limited to, a motor vehicle manufacturer, retail store, nonprofit organization, electric utility, or tourism stakeholder.

Profitable and sustainable: Yielding profit or financial gain after the initial project investment and the financial ability to maintain the equipment over time. Projects that strongly demonstrate their financial sustainability within a five-year performance period may be prioritized.

Project: Deployment of publicly accessible ~~((electric vehicle fast charging))~~ clean alternative fuel vehicle charging and refueling stations at one or more accessible locations along a corridor.

Renewable hydrogen: Hydrogen produced using renewable resources (such as water, wind, and solar energy) both as the source for hydrogen and as the source for energy input into the production process.

Zero emission vehicles (ZEV): Vehicles that do not produce tailpipe pollution or that generate fewer emissions than gas-powered cars including battery electric vehicles, plug-in hybrid electric vehicles, and hydrogen fuel cell vehicles.

AMENDATORY SECTION (Amending WSR 16-21-092, filed 10/19/16, effective 11/19/16)

WAC 468-602-030 Priority corridors. The department shall define the corridors within which bidders may propose to install electric vehicle charging and hydrogen refueling infrastructure. Priority corridors ~~((include Interstate 5, U.S.~~

Highway 2, Interstate 90, U.S. Highway 101, Interstate 82, U.S. Highway 395, and roadways connecting midsize communities and major tourist destinations)) for electric vehicle charging infrastructure include Interstate 5, Interstate 82, Interstate 90, Interstate 405, U.S. Route 2, U.S. Route 12, U.S. Route 101, U.S. Route 395, and roadways connecting midsize communities and major tourist destinations. Priority corridors for hydrogen refueling stations include, but are not limited to, Interstate 5, Interstate 82, Interstate 90, U.S. Route 2, U.S. Route 97, State Route 7, and State Route 167. These priority corridors may be updated over time and bidders may propose other corridors for consideration.

The department believes having publicly accessible electric vehicle fast chargers ~~((in forty-mile))~~ and hydrogen refueling stations in regular intervals along corridors will provide the basic network necessary to enable alternative fuel vehicle travel between communities. The department further recognizes that an effective corridor requires redundancy and fault tolerance, especially in high-use areas. Bidders are encouraged to submit proposals that clearly ~~((support the department's goal of a minimum forty-mile))~~ meet nationally recognized interval targets by fuel type. The department supports upgrades and improvements that expand driver access to existing charging and refueling sites and/or that add capacity/redundancy in congested, high-volume areas for a more robust, dependable charging network. Bidders must explain how their project will lead to the eventual build out of the corridor, and/or planned ~~((future charging))~~ infrastructure along the corridor.

A bidder may submit a proposal for a project in a corridor that is not listed above as a priority corridor. The department will consider such proposals under the following guidelines:

- Must meet the requirements listed in WAC 468-602-040.
- Must provide supporting evidence that ~~((charging))~~ stations will be located where the charging or hydrogen refueling services are in demand by ~~((electric vehicle customers))~~ alternative fuel vehicle drivers.

AMENDATORY SECTION (Amending WSR 16-21-092, filed 10/19/16, effective 11/19/16)

WAC 468-602-040 Project requirements. Projects shall provide safe, convenient, cost-competitive, reliable, and easy access for drivers to recharge mass-produced ~~((plug-in))~~ electric vehicles or refuel hydrogen fuel cell vehicles with industry standard ~~((charging))~~ equipment. Projects shall ~~((expand))~~ address gaps in the state's low-carbon transportation infrastructure which may include expanding the network of infrastructure geographically along underserved roadways ~~((and/or strengthen the existing network by providing)),~~ upgrading existing stations with equipment that is compatible with more makes and models of alternative fuel vehicles ~~((and by providing additional locations for)),~~ and adding stations in high-usage areas to provide fault tolerance and redundancy. The department may prioritize projects located in or benefiting disadvantaged communities. The department shall ensure projects meet the following requirements:

(1) Bidders must have private sector partners contributing to the project who stand to gain indirect value from development of the project including, but not limited to, motor vehicle manufacturers, dealerships, retail stores, ~~((or))~~ utilities, economic developers, and tourism stakeholders;

(2) Bidders must demonstrate that the proposed project will be valuable to ~~((electric))~~ alternative fuel vehicle drivers and will address a gap in the state's ~~((electric vehicle charging station))~~ low carbon transportation infrastructure;

(3) Projects must be expected to be profitable and sustainable over time for the owner-operator and/or the private sector partner, inclusive of indirect value gained;

(4) Bidders must specify how the project captures the indirect value of ~~((charging))~~ station deployment to the private sector partner;

(5) Bidders and their private sector partners must agree to operate and maintain the stations for at least five years and must meet the requirements in the department's solicitation materials for ~~((networked))~~ equipment offerings, station operations and uptime, public access, payment options, customer service, signage, and period of performance; and

(6) Bidders and their private sector partners have the ability to reinvest any proceeds from ongoing operations to upgrade equipment and expand the ~~((power and amount of chargers at a given))~~ site to accommodate higher utilization rates in the future.

AMENDATORY SECTION (Amending WSR 16-21-092, filed 10/19/16, effective 11/19/16)

WAC 468-602-050 Selection process. The selection process shall comply with all applicable state laws and policies that govern the department. Solicitations will include, but are not limited to, the following steps:

- Appointment of a procurement coordinator;
- A schedule of procurement activities;
- Bidder question and answer period;
- Public notification of apparently successful bidder;
- An optional bidder debrief; and
- Complaint and protest procedures.

~~((In evaluating proposals, the department may use the electric vehicle financial analysis tool developed during the joint transportation committee's study of financing models for electric vehicle charging station infrastructure if the tool is made available to all potential bidders.))~~

The department may award only one grant or loan per project from the electric vehicle ~~((charging))~~ infrastructure account.

WSR 20-19-127
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Denturists)

[Filed September 22, 2020, 10:34 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-812-010, 246-812-120, 246-812-125, and 246-812-161, the board of denturists is proposing to repeal requirements for AIDS education and training from registration, certification, and licensure requirements as a result of the repealed AIDS education and training requirements for health professionals obtaining registration, certification, and licensure under ESHB 1551 (chapter 76, Laws of 2020).

Hearing Location(s): On Friday, November 6, 2020, at 12:00 noon. In response to the coronavirus disease 2019 (COVID-19), the board of denturists will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To access the meeting: Please join the meeting from your computer, tablet, or smartphone: <https://global.gotomeeting.com/join/423366245>. You can also dial in using your phone: United States: +1 (669) 224-3412. Access Code: 423-366-245. New to GoToMeeting? Get the app now and be ready when your first meeting starts: <https://global.gotomeeting.com/install/423366245>.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Vicki Brown, Program Manager, Office of Health Professions, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, email vicki.brown@doh.wa.gov, <https://fortress.wa.gov/doh/policy-review>, fax 360-236-4901, by October 30, 2020.

Assistance for Persons with Disabilities: Contact Vicki Brown, phone 360-236-4865, fax 360-236-4901, TTY 711, email vicki.brown@doh.wa.gov, by October 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of denturists (board) proposed to repeal requirements in chapter 246-812 WAC requiring AIDS prevention and information education. The proposed amendments will remove requirements in WAC 246-812-010(1), definitions, 246-812-120(6), dentist licensure—Eligibility and application requirements, 246-812-125(6), dentist—Endorsement, and 246-812-161 (3)(c)(vii), inactive license.

Reasons Supporting Proposal: ESHB 1551 repealed RCW 70.24.270 Health professionals—Rules for AIDS education and training by removing AIDS education and training requirements.

As a result of ESHB 1551, the department of health (DOH) will repeal chapter 246-12 WAC, Part 8 - AIDS prevention and information education requirements. The board proposes to repeal requirements in WAC 246-812-010(1), 246-812-120(6), 246-812-125(6), and 246-812-161 (3)(c)(vii) requiring AIDS education and training for denturists. These rules detail the definitions, acceptable training and education, and documentation requirements for denturists concerning AIDS including the number of hours of training required. The board is proposing to no longer require these in support of legislation and reducing stigma towards people living with HIV/AIDS (PLWH).

When Washington adopted statutes [statutes] concerning AIDS, very little was known about the disease compared to today. In 2014, Governor Inslee issued a proclamation supporting End AIDS Washington, a statewide initiative to

reduce new HIV cases by fifty percent by the end of 2020. In an effort to reduce stigma, ESHB 1551 repeals statutes [statutes] concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees reducing stigma towards PLWH by not singling out AIDS as an exceptional disease that requires specific training and education separate from other health conditions.

Statutory Authority for Adoption: RCW 18.30.065.

Statute Being Implemented: ESHB 1551 (chapter 76, Laws of 2020).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOH, board of denturists, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Vicki Brown, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4865.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules, the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

September 22, 2020
Trina Crawford
Executive Director

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) ("~~Acquired immunodeficiency syndrome~~" or "~~AIDS~~" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2)) "Approval" and "accreditation" are used interchangeably with reference to sanctioning of courses.

((3)) (2) "Bruxism" means the excessive grinding of the teeth or excessive clenching of the jaw.

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-120 Denturist licensure—Eligibility and application requirements. An applicant for a denturist license shall submit to the board:

- (1) A completed application;
- (2) The application fee required under WAC 246-812-990;
- (3) Verification of passing both a board-approved written examination and a practical examination which includes a practical demonstration of skills;

(4) Verification of having passed the online jurisprudence examination; and

(5) An official transcript from an educational institution approved by the board(~~(; and~~

~~(6) Verification of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-125 Denturist licensure—Endorsement. An applicant for licensure who is currently licensed to practice denturism in another state, territory of the United States, District of Columbia, or Puerto Rico, that the board has determined has substantially equivalent licensing standards including written and clinical examinations, shall submit to the board:

- (1) A completed application;
- (2) The application fee required in WAC 246-812-990;
- (3) An official transcript from an educational program approved by the board;
- (4) Verification of successful completion of board-approved examinations that include:
 - (a) A written examination that contains the topics listed in RCW 18.30.100(4);
 - (b) A practical examination that includes a practical demonstration of skills; and
 - (c) The online jurisprudence examination(~~(;)~~).
- (5) Current licensure in a jurisdiction approved by the board under RCW 18.30.090(1)(~~(; and~~
- ~~(6) Seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-161 Inactive license. (1) A licensed denturist may obtain an inactive license by meeting the requirements of WAC 246-12-090.

(2) An inactive license must be renewed every year on the denturist's birthday according to WAC 246-12-100 and pay the applicable fees according to WAC 246-812-990.

(3) A denturist with an inactive license may return to active status.

(a) If a license is inactive for three years or less, to return to active status the denturist shall meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990;

(b) If a license is inactive for more than three years and the denturist has been actively practicing in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico the denturist shall:

- (i) Provide to the board primary source verification of the active denturist license, submitted directly from another licensing entity that includes:
 - (A) License number;
 - (B) Issue date;
 - (C) Expiration date; and
 - (D) Whether the denturist is or has been the subject of final or pending disciplinary action.

(ii) Provide to the board verification of current active practice in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico for the last three years; and

(iii) Meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990.

(c) If a license is inactive for more than three years, and the dentist has not been actively practicing in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico the dentist shall provide to the board:

(i) A written request to change inactive licensure status to active status;

(ii) The applicable fees according to WAC 246-812-990;

(iii) Documentation of successful completion of the examinations as required in RCW 18.30.100;

(iv) Primary source verification of all dentist or health care licenses held, submitted directly from the licensing agency that includes:

(A) License number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the practitioner is or has been the subject of final or pending disciplinary action.

(v) Written declaration that continuing competency requirements for the two most recent years have been met according to WAC 246-812-159; and

(vi) Proof of successful completion of the approved written jurisprudence examination within the past year (~~and~~

~~(vii) Proof of AIDS education according to WAC 246-817-120).~~

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-5830, by October 30, 2020, 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-5830, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by October 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is being proposed to ensure classifications and rates accurately reflect expected losses for fulfillment centers. We propose creating one new classification for fulfillment centers and amending two classifications to reflect references to the new classification.

Proposal:

- Creating a new classification for Classification 2103 Fulfillment centers (WAC 296-17A-2103);
- Creating a new rate for Classification 2103 in WAC 296-17-89509;
- Amending Classification 2102 Warehouses (WAC 296-17A-2102) exclusion language to refer to the new fulfillment center classification; and
- Amending Classification 6407 Wholesale stores, N.O.C. (WAC 296-17A-6407) exclusion language to refer to the new fulfillment center classification.

New WAC 296-17A-2103 Fulfillment centers and 296-17-89509; and amending WAC 296-17A-2102 Warehouses and 296-17A-6407 Wholesale stores, N.O.C.

Reasons Supporting Proposal: RCW 51.16.035 requires the department to classify all occupations or industries by degree of hazard. The department researched and evaluated the operations of fulfillment centers currently classified in Classification 2102 Warehouses - General Merchandise. We discovered, after evaluating expected losses and some unique operations of fulfillment centers, that possible classification changes may be required to ensure these operations are still being classified by their degree of hazard to ensure fair rates in the industry.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Mike Ratko, Tumwater, Washington, 360-902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules are adjusting rates pursuant to legislative standards.

WSR 20-19-128

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed September 22, 2020, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-105.

Title of Rule and Other Identifying Information: Fulfillment centers classification, chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On October 27, 2020, at 3 p.m. Zoom hearing; joining electronically: Join Zoom meeting at <https://zoom.us/j/97005594668>, Meeting ID: 970 0559 4668, Passcode: 8V!\$KcC5. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 970 0559 4668, Passcode: 0218 5292; or on October 29, 2020, at 3 p.m., joining electronically: Join Zoom meeting at <https://zoom.us/j/98210811662>, Meeting ID: 982 1081 1662, Passcode: 4a%&u29m. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 982 1081 1662, Passcode: 40650585.

Date of Intended Adoption: November 30, 2020.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

September 22, 2020
Joel Sacks
Director

NEW SECTION

WAC 296-17-89509 Classification 2103.

**Fulfillment centers rate
Effective January 1, 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
2103	1.3620	0.0209	0.6532	0.1372

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-2102 Classification 2102.

2102-00 Warehouses - General merchandise

Applies to establishments operating as warehouses for general merchandise. This merchandise belongs to a customer and is usually stored for long periods of time. Products typically involved are bulk, nonperishable materials which might include, but not be limited to:

- Coffee;
- Dry cement;
- Potatoes;
- Rice.

Work contemplated by this classification includes, but is not limited to:

- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Routine maintenance;
- Security.

Equipment and machinery used includes:

- Cleaning and recordkeeping supplies;
- Forklifts;
- Pallet jacks;
- Shop vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1102;
- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;
- Wholesale dealers who operate a warehouse for storage of their own product which is to be reported separately in the classification applicable to the product being sold;

- Warehousing of household furnishings by a moving and storage company which is to be reported separately in classification 6907;
- Cold storage plants which are to be reported separately in classification 4401;
- Ministorage warehousing which is to be reported separately in classification 4910;
- Field bonded warehouses which are to be reported separately in classification 2008;
- Warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

Special note: Even though this type of operation may handle some "grocery" products, it differs from 2102-11 in that the products being handled in 2102-00 are in bulk packaging (not cases of consumer-size packages), do not belong to the business that is warehousing them, and are not intended for sale to a wholesaler/retailer.

2102-04 Recycle, collection and receiving stations; rags, bottles, paper and metal container dealers, N.O.C.

Applies to establishments engaged in the collection of used paper, aluminum, tin, glass, and plastic for the purpose of selling the material to another business that will recycle/remanufacture it into new products. These facilities normally acquire material by placing collection bins at various remote locations, operating a drop-off center (this phase of the business is known in the trade as a "buy back center"). This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to:

- Sorting material;
- Operating various pieces of equipment used to crush, reduce, wash, and bale material;
- Weighing containers;
- Paying customers for receipt of items that have a redemption value by the pound or piece ("buying back");
- Operating shop or yard vehicles.

Machinery and equipment includes, but is not limited to:

- Balers;
- Can crushers;
- Collection bins;
- Forklifts;
- Shredders;
- Rolloff trucks to handle the collection bins;
- Shop or yard vehicles;
- Weigh scales.

This classification excludes:

- All trucking outside of the yard which is to be reported separately in classification 1102;
- Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;
- Establishments engaged in collecting, sorting and reducing scrap metal such as junk dealers, scrap metal dealers or processors, which also receive glass, paper, plastic, etc., which are to be reported separately in classification 0604; and

- Establishments engaged in collecting used computer equipment for recycling which may be reported in classification 4107.

Special note: Classification 2102-04 should not be assigned to an employer who also operates a business subject to classification 4305-18 (Garbage, refuse or ashes collecting) without careful review and an on-site survey. Most garbage collecting businesses have some type of "recycle" program as part of their normal operations in an effort to sort and reduce the amount of waste that goes to landfills and this is considered an inclusion.

2102-11 Grocery, fruit or produce distributors - Wholesale or combined wholesale and retail

Applies to establishments engaged in the wholesale, or wholesale/retail, distribution of a variety of grocery items, fruit and produce. A business in this classification buys products from the manufacturer and sells to retail grocery stores, restaurants, and similar businesses. Grocery items may include, but not be limited to:

- Beverages;
- Dairy products;
- Frozen foods;
- Household cleaning supplies;
- Packaged foods;
- Paper products;
- Personal care items.

Work contemplated by this classification includes, but is not limited to:

- Breakdown of merchandise into smaller lots;
- Incidental repackaging;
- Maintaining the facility;
- Moving merchandise within the facility;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;
- Pallet jacks;
- Strapping and shrink wrapping equipment;
- Vehicles.

This classification excludes:

- Delivery drivers who are to be reported separately in classification 1101;

Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Any general merchandise warehouse operations in which the operator of the warehouse does not own the merchandise being handled and it is in bulk quantities, which is to be reported separately in classification 2102-00;

- Cold storage plants handling food products which are to be reported separately in classification 4401;

- Operations specializing in vegetable/fruit packing for wholesale distribution which are to be reported separately in classification 2104;

- Operations specializing in wholesale distribution of beer, wine, ale or soft drinks which are to be reported separately in classification 2105;

- Field bonded warehouses which are to be reported separately in classification 2008; and

- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

2102-28 Wool or cotton merchants

Applies to establishments operating as wool or cotton merchants. Merchants subject to this classification buy raw wool or cotton from others, do incidental sorting, grading and repackaging, and sell the product to another business for use as a raw material to make products such as yarn, thread or fabric. Work contemplated by this classification includes, but is not limited to:

- Hand sorting the product by grade (quality);
- Maintaining the facility;
- Moving merchandise within the facility;
- Repackaging;
- Recordkeeping;
- Security;
- Unloading deliveries.

Equipment and machinery includes, but is not limited to:

- Forklifts;
- Pallet jacks;
- Repackaging equipment;
- Vehicles.

This classification excludes:

- Drivers who are to be reported separately in classification 1102;

- Wholesale dealers of a finished wool or cotton product which are to be reported separately in the classification applicable to the product; and

- The warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-6407 Classification 6407.

6407-00 Wholesale stores, N.O.C. - Including combined wholesale and retail store operations

Applies to establishments engaged in the wholesale, or combined wholesale and retail sales of merchandise that is not covered by another classification (N.O.C.). Establishments subject to classification 6407 usually own the merchandise they sell, but may also be marketing goods on consignment, in which case classification 6407 still applies because the exposure and processes are the same. This classification is primarily the wholesale counterpart (supplier) for establishments assigned to retail store classification 6305, 6406, and 6411.

Classification 6407 also applies to retail stores with high volume warehouse and distribution facilities without the normal exposures associated with a retail store.

Work contemplated by classification 6407 includes, but is not limited to, maintaining warehouse inventories, sorting and grading goods, and breaking down bulk quantities to repack into smaller lots. Equipment typically used includes, but is not limited to:

- Balers to bind merchandise into bundles;
- Strapping equipment to secure palletized goods;

- Forklifts; and
- Hand tools.

This classification excludes:

- Delivery which is to be reported separately in classification 1101;

• Businesses that meet the criteria for the definition of fulfillment centers in classification 2103 are classified in 2103;

- Large high volume sales operations where retail customers select and carry out the goods they purchase, which are reported in the classification applicable to the merchandise sold.

Special notes: When assigning classification 6407, care must be exercised to look beyond the words "wholesale" or "retail." The manufacturer of a product will also "wholesale" their merchandise (or a combination of their own merchandise and finished products bought from other manufacturers) to a customer. These sales are an integral part of the manufacturing/marketing process and is an inclusion in the manufacturing classification. Establishments that buy goods, such as clothing or cloth goods, in wholesale quantities, then screen print or embroider them for resale are performing manufacturing operations and are to be reported separately in the appropriate manufacturing classification.

Warehouse operations in classification 2102, with the exception of grocery dealers, do not own the product they are warehousing and are not in the business of selling the goods they store. Businesses in classification 6407 may operate a warehouse, but only as an integral part of the wholesaling/distribution process, which is included in classification 6407.

NEW SECTION

WAC 296-17A-2103 Classification 2103.

2103-00 Fulfillment centers

Applies to businesses engaged in operating facilities called fulfillment centers. Fulfillment centers in this rule are defined as businesses that:

- Have an online marketplace to sell their own merchandise and third-party sellers' merchandise;
- Sell their own name brand merchandise retail online;
- Offer warehousing and order fulfillment services for third-party sellers;
- Use automated vehicles and robotics within the facility;
- Emphasize quick timelines and monitor employees for speed; and
- Offer same-day or two-day delivery options.

These businesses store, sell, and ship a wide variety of goods. Types of goods for sale may include, but are not limited to:

- Appliances;
- Arts/crafts/sewing;
- Automotive;
- Baby products;
- Beauty products;
- Cell phones and accessories;
- Clothing, shoes and jewelry;
- Collectibles and fine art;
- Computers;

- Electronics;
- Grocery/gourmet foods;
- Home and kitchen;
- Health and personal care;
- Industrial and scientific;
- Office products;
- Pet supplies;
- Patio, lawn and garden;
- Sports and outdoors;
- Tools and home improvement;
- Toys and games.

Operations may include, but are not limited to:

- Customer service centers;
- Logistic operations, coordinating customer orders with the closest fulfillment center and planning transportation needs;
 - Warehouses - Pick, pack, and ship customer orders. Some warehouses may be specifically for large items like furniture;
 - Sortation centers - Customer orders are sorted by final destination and consolidated on to trucks for faster delivery;
 - Specialty centers - Designed for specific item categories or for seasonal use;
 - Receiving centers - Take in large orders of types of inventory expected to sell quickly and allocating to other locations;
 - Third-party vendor services - Services include order, payment, and returns processing. Fulfillment centers also offer warehousing and order fulfillment to third-party sellers;
 - Specialized, automated or mechanized tools or equipment or systems - Used to speed sorting or delivery or processing including, but not limited to, robotic vehicles, or mechanized equipment.

Work activities may include, but are not limited to:

- Using automated or mechanized tools, equipment, systems or vehicles and/or robotics;
- Unpacking and inspecting incoming goods;
- Placing goods in storage and recording their location;
- Quality assurance;
- Picking goods from computer recorded locations to make up an individual shipment;
- Sorting and packing orders;
- Shipping.

Equipment and machinery may include, but are not limited to:

- Bins;
- Forklifts;
- Computer devices;
- Conveyors;
- Handheld scanners;
- Mailing machines;
- Packing machines;
- Robots (small and large);
- Trucks or vans.

Special Notes:

- This classification differs from subclassification 2102-00 Warehouses in that businesses in subclassification 2102-00 store merchandise that they do not own, usually store merchandise for long periods of time, and do not fulfill orders placed by individual retail customers.

- This classification differs from classification 6407 Wholesale stores in that businesses in classification 2103 meet the definition of "fulfillment centers" at the beginning of this rule and businesses in classification 6407 do not meet all of the criteria to be classified as fulfillment centers.

Exclusions:

- Delivery drivers (other than those involved in transferring inventory between facilities owned by the business) are reported separately in classification 1101;
- Warehouse operations that store products for others, do not own any of the products being stored, and are not in the business of selling the goods they store are classified in 2102;
- Businesses selling a specific category of goods are classified in the store classification applicable to the products sold;
- Wholesale distributors that do not operate automated and robotic fulfillment centers that sell both retail and wholesale of products for themselves as well as third-party vendors are classified in 6407.

WSR 20-19-129
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed September 22, 2020, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-077.

Title of Rule and Other Identifying Information: 2021 Industrial insurance premium rates, chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and Chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): On October 27, 2020, at 10 a.m. Zoom hearing, joining electronically: Join Zoom meeting at <https://zoom.us/j/99395316830>, Meeting ID: 9939531 6830, Passcode: Oct2720!. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 993 9531 6830, Passcode: 35862365; or on October 29, 2020, at 10 a.m., joining electronically: Join Zoom meeting at <https://zoom.us/j/97637403577>, Meeting ID: 976 3740 3577, Passcode: 4n*z2LvM. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 976 3740 3577, Passcode: 44645997.

Date of Intended Adoption: November 30, 2020.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4988, by October 30, 2020, by 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by October 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal will amend the tables of classification base premium rates, experience rating plan parameters, experience modification

factor calculation limitations, and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2021. Classification base rates were updated to align with expected losses. The department proposes a zero (0) percent overall average premium rate change.

This proposal also intends to amend experience rating and retrospective rating rules (WAC 296-17-870 Evaluation of actual losses, and 296-17B-530 Determining case incurred losses) to explain that all accepted COVID-19 claim losses will not be included in the determination of an employer's experience modification factor or in an employer's retrospective rating adjustment calculation. An employer will not lose their claim free discount as a result of an allowed COVID-19 claim.

This proposal is also notice that the director intends to transfer the amount of the accident and medical-aid funds combined that exceed ten percent of funded liabilities as required by RCW 51.44.023.

Amending WAC 296-17-855 Experience modification, 296-17-870 Evaluation of actual losses, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing rates, 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class, 296-17-901 Risk classification hazard group table, 296-17-920 Assessment for supplemental pension fund, 296-17B-530 Determining case incurred losses, 296-17B-540 Determining loss incurred for each claim, and 296-17B-900 Retrospective rating plans standard premium size ranges.

Reasons Supporting Proposal: Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

The department is proposing an overall average premium rate change of zero (0) percent to ensure adequate premiums to cover expected losses for 2021 claims. Financial projections point to the need for a rate increase, but the department of labor and industries (L&I) is using funds from the workers' compensation contingency reserve to keep the average rate from increasing in 2021.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Mike Ratko, Tumwater, Washington, 360-902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules are adjusting rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

September 22, 2020
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\text{EXPERIENCE MODIFICATION FACTOR} = \frac{\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}}{\text{Expected Loss}}$$

Where

Credible Actual Primary Loss = Actual Primary Loss x Primary Credibility

+ Expected Primary Loss x (100% - Primary Credibility)

Credible Actual Excess Loss = Actual Excess Loss x Excess Credibility

+ Expected Excess Loss x (100% - Excess Credibility)

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of ((~~\$20,112~~) \$20,743) the actual primary loss shall be determined from the formula:

$$\text{ACTUAL PRIMARY LOSS} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}}$$

$$\text{Primary Loss} = \frac{51,857}{(\text{Total Loss} + 31,114)} \times \text{Total Loss}$$

For each claim, less than ((~~\$20,112~~) \$20,743) the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of ((~~\$3,220~~) \$3,340) or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
(300)	Medical Only	0	0	0
4,000	Medical Only	780	780	0
4,000	Timeless	4,000	4,000	0
30,000	Medical Only	26,780	23,644	3,136
30,000	Timeless	30,000	25,070	4,930
130,000	PPD	130,000	40,810	89,190
500,000	TPD Pension	300,137	45,688	254,449
2,000,000	TPD Pension	300,137	45,688	254,449))
300	Medical Only	0	0	0
4,000	Medical Only	660	660	0
4,000	Timeless	4,000	4,000	0
30,000	Medical Only	26,660	23,930	2,730
30,000	Timeless	30,000	25,456	4,544
130,000	PPD	130,000	41,842	88,158
500,000	TPD Pension	331,662	47,409	284,253
2,000,000	TPD Pension	331,662	47,409	284,253

Note: The deduction, ((~~\$3,220~~) \$3,340), is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and round-

ing the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 19-23-080, filed 11/19/19, effective 1/1/20)

WAC 296-17-870 Evaluation of actual losses. (1)

Except as provided in subsections (3) through ~~((42))~~ (13) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included. The actual losses for closed claims must include:

- (a) Accident and medical aid payments; and
- (b) Pension reserve amounts paid by the accident fund; and
- (c) Accident and medical aid benefits or payments that are scheduled to be paid; and
- (d) Reserve for other accident and medical aid benefits accessible by the worker while the claim is closed.

The actual losses for claims that are open may, in addition, also include a reserve for future payments. Actual losses do not include wage subsidies or reimbursements paid by the stay-at-work program.

(2) **Valuation date.** The valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

(3) **Retroactive adjustments - Revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

- (a) In cases where loss values are included or excluded through mistake other than error of judgment.
- (b) In cases where a third party recovery is made, subject to subsection (5)(a) of this section.
- (c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.
- (d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).
- (e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

(4) **Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of

Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

(5) **Third-party recovery - Effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) **Definitions:**

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

(6) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

(7) **Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," solely for the purpose of experience rating, will be the date the claim for benefits was received by the department. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period,

and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

(8) **Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

(9) **Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

(10) **Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

(11) **Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-150.

(12) **Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

(13) 2019 Coronavirus (COVID-19) claims: All accepted COVID-19 claim losses will not be included in the determination of an employer's experience modification factor. An employer will not lose their claim free discount as a result of an allowed COVID-19 claim.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, ((2020)) 2021**

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
((5,000	5,000
10,000	10,000

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
15,000	15,000
20,112	20,112
29,834	25,000
44,627	30,000
69,102	35,000
100,000	38,627
117,385	40,000
200,000	43,690
300,137 **	45,688))
5,000	5,000
10,000	10,000
15,000	15,000
20,743	20,743
28,963	25,000
42,706	30,000
64,602	35,000
100,000	39,551
104,964	40,000
200,000	44,876
331,662 **	47,409

** Maximum claim value

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2020)) 2021**

Maximum Claim Value = ((~~\$300,137~~)) \$331,662
Average Death Value = ((~~\$300,137~~)) \$331,662

Expected Losses	Primary Credibility	Excess Credibility
((0 - 5,973	12%	7%
5,974 - 6,377	13%	7%
6,378 - 6,785	14%	7%
6,786 - 7,196	15%	7%
7,197 - 7,614	16%	7%
7,615 - 8,036	17%	7%
8,037 - 8,464	18%	7%
8,465 - 8,898	19%	7%
8,899 - 9,336	20%	7%
9,337 - 9,782	21%	7%
9,783 - 10,233	22%	7%
10,234 - 10,692	23%	7%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility
10,693	- 11,156	24%	7%	159,094	- 184,365	60%	13%
11,157	- 11,629	25%	7%	184,366	- 184,687	61%	13%
11,630	- 12,111	26%	7%	184,688	- 210,439	61%	14%
12,112	- 12,596	27%	7%	210,440	- 217,233	61%	15%
12,597	- 13,093	28%	7%	217,234	- 236,352	62%	15%
13,094	- 13,597	29%	7%	236,353	- 250,104	62%	16%
13,598	- 14,110	30%	7%	250,105	- 262,427	63%	16%
14,111	- 14,636	31%	7%	262,428	- 282,974	63%	17%
14,637	- 15,167	32%	7%	282,975	- 288,668	64%	17%
15,168	- 15,713	33%	7%	288,669	- 315,073	64%	18%
15,714	- 16,270	34%	7%	315,074	- 315,841	64%	19%
16,271	- 16,839	35%	7%	315,842	- 341,649	65%	19%
16,840	- 17,420	36%	7%	341,650	- 348,712	65%	20%
17,421	- 18,016	37%	7%	348,713	- 368,388	66%	20%
18,017	- 18,632	38%	7%	368,389	- 381,583	66%	21%
18,633	- 19,259	39%	7%	381,584	- 395,300	67%	21%
19,260	- 19,907	40%	7%	395,301	- 414,453	67%	22%
19,908	- 20,573	41%	7%	414,454	- 422,385	68%	22%
20,574	- 21,262	42%	7%	422,386	- 447,319	68%	23%
21,263	- 21,975	43%	7%	447,320	- 449,643	69%	23%
21,976	- 22,713	44%	7%	449,644	- 477,075	69%	24%
22,714	- 23,482	45%	7%	477,076	- 480,189	69%	25%
23,483	- 24,286	46%	7%	480,190	- 504,685	70%	25%
24,287	- 25,127	47%	7%	504,686	- 513,061	70%	26%
25,128	- 26,015	48%	7%	513,062	- 532,474	71%	26%
26,016	- 26,957	49%	7%	532,475	- 545,931	71%	27%
26,958	- 27,959	50%	7%	545,932	- 560,444	72%	27%
27,960	- 29,044	51%	7%	560,445	- 578,800	72%	28%
29,045	- 30,232	52%	7%	578,801	- 588,596	73%	28%
30,233	- 31,555	53%	7%	588,597	- 611,670	73%	29%
31,556	- 31,690	54%	7%	611,671	- 616,931	74%	29%
31,691	- 33,080	54%	8%	616,932	- 644,540	74%	30%
33,081	- 34,944	55%	8%	644,541	- 645,454	75%	30%
34,945	- 52,886	56%	8%	645,455	- 674,164	75%	31%
52,887	- 58,289	57%	8%	674,165	- 677,409	75%	32%
58,290	- 83,259	57%	9%	677,410	- 703,063	76%	32%
83,260	- 85,755	57%	10%	703,064	- 710,279	76%	33%
85,756	- 108,382	58%	10%	710,280	- 732,152	77%	33%
108,383	- 118,623	58%	11%	732,153	- 743,149	77%	34%
118,624	- 133,662	59%	11%	743,150	- 761,438	78%	34%
133,663	- 151,494	59%	12%	761,439	- 776,018	78%	35%
151,495	- 159,093	60%	12%	776,019	- 790,917	79%	35%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility
790,918	- 808,888	79%	36%	1,466,281	- 1,493,155	100%	57%
808,889	- 820,593	80%	36%	1,493,156	- 1,527,728	100%	58%
820,594	- 841,756	80%	37%	1,527,729	- 1,562,551	100%	59%
841,757	- 850,470	81%	37%	1,562,552	- 1,597,626	100%	60%
850,471	- 874,627	81%	38%	1,597,627	- 1,632,959	100%	61%
874,628	- 880,548	82%	38%	1,632,960	- 1,668,550	100%	62%
880,549	- 907,498	82%	39%	1,668,551	- 1,704,404	100%	63%
907,499	- 910,829	83%	39%	1,704,405	- 1,740,521	100%	64%
910,830	- 940,368	83%	40%	1,740,522	- 1,776,907	100%	65%
940,369	- 941,314	84%	40%	1,776,908	- 1,813,562	100%	66%
941,315	- 972,008	84%	41%	1,813,563	- 1,850,493	100%	67%
972,009	- 973,235	84%	42%	1,850,494	- 1,887,700	100%	68%
973,236	- 1,002,909	85%	42%	1,887,701	- 1,925,186	100%	69%
1,002,910	- 1,006,105	85%	43%	1,925,187	- 1,962,956	100%	70%
1,006,106	- 1,034,026	86%	43%	1,962,957	- 2,001,013	100%	71%
1,034,027	- 1,038,976	86%	44%	2,001,014	- 2,039,360	100%	72%
1,038,977	- 1,065,354	87%	44%	2,039,361	- 2,077,998	100%	73%
1,065,355	- 1,071,846	87%	45%	2,077,999	- 2,116,934	100%	74%
1,071,847	- 1,096,900	88%	45%	2,116,935	- 2,156,167	100%	75%
1,096,901	- 1,104,716	88%	46%	2,156,168	- 2,195,706	100%	76%
1,104,717	- 1,128,663	89%	46%	2,195,707	- 2,235,549	100%	77%
1,128,664	- 1,137,584	89%	47%	2,235,550	- 2,275,704	100%	78%
1,137,585	- 1,160,649	90%	47%	2,275,705	- 2,316,172	100%	79%
1,160,650	- 1,170,455	90%	48%	2,316,173	- 2,356,959	100%	80%
1,170,456	- 1,192,856	91%	48%	2,356,960	- 2,398,069	100%	81%
1,192,857	- 1,203,323	91%	49%	2,398,070	- 2,439,500	100%	82%
1,203,324	- 1,225,288	92%	49%	2,439,501	- 2,481,263	100%	83%
1,225,289	- 1,236,195	92%	50%	2,481,264	- 2,523,355	100%	84%
1,236,196	- 1,257,949	93%	50%	2,523,356	- 2,565,789	100%	85%
1,257,950	- 1,269,064	93%	51%	2,565,790	and higher	100%	86%))
1,269,065	- 1,290,840	94%	51%	<u>0</u>	= <u>5,943</u>	<u>12%</u>	<u>7%</u>
1,290,841	- 1,301,933	94%	52%	<u>5,944</u>	= <u>6,345</u>	<u>13%</u>	<u>7%</u>
1,301,934	- 1,323,964	95%	52%	<u>6,346</u>	= <u>6,751</u>	<u>14%</u>	<u>7%</u>
1,323,965	- 1,334,802	95%	53%	<u>6,752</u>	= <u>7,160</u>	<u>15%</u>	<u>7%</u>
1,334,803	- 1,357,322	96%	53%	<u>7,161</u>	= <u>7,576</u>	<u>16%</u>	<u>7%</u>
1,357,323	- 1,367,672	96%	54%	<u>7,577</u>	= <u>7,996</u>	<u>17%</u>	<u>7%</u>
1,367,673	- 1,390,918	97%	54%	<u>7,997</u>	= <u>8,422</u>	<u>18%</u>	<u>7%</u>
1,390,919	- 1,400,542	97%	55%	<u>8,423</u>	= <u>8,854</u>	<u>19%</u>	<u>7%</u>
1,400,543	- 1,424,753	98%	55%	<u>8,855</u>	= <u>9,289</u>	<u>20%</u>	<u>7%</u>
1,424,754	- 1,433,412	98%	56%	<u>9,290</u>	= <u>9,733</u>	<u>21%</u>	<u>7%</u>
1,433,413	- 1,458,831	99%	56%	<u>9,734</u>	= <u>10,182</u>	<u>22%</u>	<u>7%</u>
1,458,832	- 1,466,280	99%	57%	<u>10,183</u>	= <u>10,639</u>	<u>23%</u>	<u>7%</u>

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>10,640</u>	=	<u>11,100</u>	<u>24%</u>	<u>7%</u>	<u>158,299</u>	=	<u>183,443</u>	<u>60%</u>	<u>13%</u>
<u>11,101</u>	=	<u>11,571</u>	<u>25%</u>	<u>7%</u>	<u>183,444</u>	=	<u>183,764</u>	<u>61%</u>	<u>13%</u>
<u>11,572</u>	=	<u>12,050</u>	<u>26%</u>	<u>7%</u>	<u>183,765</u>	=	<u>209,387</u>	<u>61%</u>	<u>14%</u>
<u>12,051</u>	=	<u>12,533</u>	<u>27%</u>	<u>7%</u>	<u>209,388</u>	=	<u>216,147</u>	<u>61%</u>	<u>15%</u>
<u>12,534</u>	=	<u>13,028</u>	<u>28%</u>	<u>7%</u>	<u>216,148</u>	=	<u>235,170</u>	<u>62%</u>	<u>15%</u>
<u>13,029</u>	=	<u>13,529</u>	<u>29%</u>	<u>7%</u>	<u>235,171</u>	=	<u>248,853</u>	<u>62%</u>	<u>16%</u>
<u>13,530</u>	=	<u>14,039</u>	<u>30%</u>	<u>7%</u>	<u>248,854</u>	=	<u>261,115</u>	<u>63%</u>	<u>16%</u>
<u>14,040</u>	=	<u>14,563</u>	<u>31%</u>	<u>7%</u>	<u>261,116</u>	=	<u>281,559</u>	<u>63%</u>	<u>17%</u>
<u>14,564</u>	=	<u>15,091</u>	<u>32%</u>	<u>7%</u>	<u>281,560</u>	=	<u>287,225</u>	<u>64%</u>	<u>17%</u>
<u>15,092</u>	=	<u>15,634</u>	<u>33%</u>	<u>7%</u>	<u>287,226</u>	=	<u>313,498</u>	<u>64%</u>	<u>18%</u>
<u>15,635</u>	=	<u>16,189</u>	<u>34%</u>	<u>7%</u>	<u>313,499</u>	=	<u>314,262</u>	<u>64%</u>	<u>19%</u>
<u>16,190</u>	=	<u>16,755</u>	<u>35%</u>	<u>7%</u>	<u>314,263</u>	=	<u>339,941</u>	<u>65%</u>	<u>19%</u>
<u>16,756</u>	=	<u>17,333</u>	<u>36%</u>	<u>7%</u>	<u>339,942</u>	=	<u>346,968</u>	<u>65%</u>	<u>20%</u>
<u>17,334</u>	=	<u>17,926</u>	<u>37%</u>	<u>7%</u>	<u>346,969</u>	=	<u>366,546</u>	<u>66%</u>	<u>20%</u>
<u>17,927</u>	=	<u>18,539</u>	<u>38%</u>	<u>7%</u>	<u>366,547</u>	=	<u>379,675</u>	<u>66%</u>	<u>21%</u>
<u>18,540</u>	=	<u>19,163</u>	<u>39%</u>	<u>7%</u>	<u>379,676</u>	=	<u>393,323</u>	<u>67%</u>	<u>21%</u>
<u>19,164</u>	=	<u>19,807</u>	<u>40%</u>	<u>7%</u>	<u>393,324</u>	=	<u>412,381</u>	<u>67%</u>	<u>22%</u>
<u>19,808</u>	=	<u>20,470</u>	<u>41%</u>	<u>7%</u>	<u>412,382</u>	=	<u>420,273</u>	<u>68%</u>	<u>22%</u>
<u>20,471</u>	=	<u>21,156</u>	<u>42%</u>	<u>7%</u>	<u>420,274</u>	=	<u>445,082</u>	<u>68%</u>	<u>23%</u>
<u>21,157</u>	=	<u>21,865</u>	<u>43%</u>	<u>7%</u>	<u>445,083</u>	=	<u>447,395</u>	<u>69%</u>	<u>23%</u>
<u>21,866</u>	=	<u>22,599</u>	<u>44%</u>	<u>7%</u>	<u>447,396</u>	=	<u>474,690</u>	<u>69%</u>	<u>24%</u>
<u>22,600</u>	=	<u>23,365</u>	<u>45%</u>	<u>7%</u>	<u>474,691</u>	=	<u>477,788</u>	<u>69%</u>	<u>25%</u>
<u>23,366</u>	=	<u>24,165</u>	<u>46%</u>	<u>7%</u>	<u>477,789</u>	=	<u>502,162</u>	<u>70%</u>	<u>25%</u>
<u>24,166</u>	=	<u>25,001</u>	<u>47%</u>	<u>7%</u>	<u>502,163</u>	=	<u>510,496</u>	<u>70%</u>	<u>26%</u>
<u>25,002</u>	=	<u>25,885</u>	<u>48%</u>	<u>7%</u>	<u>510,497</u>	=	<u>529,812</u>	<u>71%</u>	<u>26%</u>
<u>25,886</u>	=	<u>26,822</u>	<u>49%</u>	<u>7%</u>	<u>529,813</u>	=	<u>543,201</u>	<u>71%</u>	<u>27%</u>
<u>26,823</u>	=	<u>27,819</u>	<u>50%</u>	<u>7%</u>	<u>543,202</u>	=	<u>557,642</u>	<u>72%</u>	<u>27%</u>
<u>27,820</u>	=	<u>28,899</u>	<u>51%</u>	<u>7%</u>	<u>557,643</u>	=	<u>575,906</u>	<u>72%</u>	<u>28%</u>
<u>28,900</u>	=	<u>30,081</u>	<u>52%</u>	<u>7%</u>	<u>575,907</u>	=	<u>585,653</u>	<u>73%</u>	<u>28%</u>
<u>30,082</u>	=	<u>31,397</u>	<u>53%</u>	<u>7%</u>	<u>585,654</u>	=	<u>608,612</u>	<u>73%</u>	<u>29%</u>
<u>31,398</u>	=	<u>31,532</u>	<u>54%</u>	<u>7%</u>	<u>608,613</u>	=	<u>613,846</u>	<u>74%</u>	<u>29%</u>
<u>31,533</u>	=	<u>32,915</u>	<u>54%</u>	<u>8%</u>	<u>613,847</u>	=	<u>641,317</u>	<u>74%</u>	<u>30%</u>
<u>32,916</u>	=	<u>34,769</u>	<u>55%</u>	<u>8%</u>	<u>641,318</u>	=	<u>642,227</u>	<u>75%</u>	<u>30%</u>
<u>34,770</u>	=	<u>52,622</u>	<u>56%</u>	<u>8%</u>	<u>642,228</u>	=	<u>670,793</u>	<u>75%</u>	<u>31%</u>
<u>52,623</u>	=	<u>57,998</u>	<u>57%</u>	<u>8%</u>	<u>670,794</u>	=	<u>674,022</u>	<u>75%</u>	<u>32%</u>
<u>57,999</u>	=	<u>82,843</u>	<u>57%</u>	<u>9%</u>	<u>674,023</u>	=	<u>699,548</u>	<u>76%</u>	<u>32%</u>
<u>82,844</u>	=	<u>85,326</u>	<u>57%</u>	<u>10%</u>	<u>699,549</u>	=	<u>706,728</u>	<u>76%</u>	<u>33%</u>
<u>85,327</u>	=	<u>107,840</u>	<u>58%</u>	<u>10%</u>	<u>706,729</u>	=	<u>728,491</u>	<u>77%</u>	<u>33%</u>
<u>107,841</u>	=	<u>118,030</u>	<u>58%</u>	<u>11%</u>	<u>728,492</u>	=	<u>739,433</u>	<u>77%</u>	<u>34%</u>
<u>118,031</u>	=	<u>132,994</u>	<u>59%</u>	<u>11%</u>	<u>739,434</u>	=	<u>757,631</u>	<u>78%</u>	<u>34%</u>
<u>132,995</u>	=	<u>150,737</u>	<u>59%</u>	<u>12%</u>	<u>757,632</u>	=	<u>772,138</u>	<u>78%</u>	<u>35%</u>
<u>150,738</u>	=	<u>158,298</u>	<u>60%</u>	<u>12%</u>	<u>772,139</u>	=	<u>786,962</u>	<u>79%</u>	<u>35%</u>

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>786,963</u>	=	<u>804,844</u>	<u>79%</u>	<u>36%</u>	<u>1,458,950</u>	=	<u>1,485,689</u>	<u>100%</u>	<u>57%</u>
<u>804,845</u>	=	<u>816,490</u>	<u>80%</u>	<u>36%</u>	<u>1,485,690</u>	=	<u>1,520,089</u>	<u>100%</u>	<u>58%</u>
<u>816,491</u>	=	<u>837,547</u>	<u>80%</u>	<u>37%</u>	<u>1,520,090</u>	=	<u>1,554,738</u>	<u>100%</u>	<u>59%</u>
<u>837,548</u>	=	<u>846,218</u>	<u>81%</u>	<u>37%</u>	<u>1,554,739</u>	=	<u>1,589,638</u>	<u>100%</u>	<u>60%</u>
<u>846,219</u>	=	<u>870,254</u>	<u>81%</u>	<u>38%</u>	<u>1,589,639</u>	=	<u>1,624,794</u>	<u>100%</u>	<u>61%</u>
<u>870,255</u>	=	<u>876,145</u>	<u>82%</u>	<u>38%</u>	<u>1,624,795</u>	=	<u>1,660,207</u>	<u>100%</u>	<u>62%</u>
<u>876,146</u>	=	<u>902,961</u>	<u>82%</u>	<u>39%</u>	<u>1,660,208</u>	=	<u>1,695,882</u>	<u>100%</u>	<u>63%</u>
<u>902,962</u>	=	<u>906,275</u>	<u>83%</u>	<u>39%</u>	<u>1,695,883</u>	=	<u>1,731,818</u>	<u>100%</u>	<u>64%</u>
<u>906,276</u>	=	<u>935,666</u>	<u>83%</u>	<u>40%</u>	<u>1,731,819</u>	=	<u>1,768,022</u>	<u>100%</u>	<u>65%</u>
<u>935,667</u>	=	<u>936,607</u>	<u>84%</u>	<u>40%</u>	<u>1,768,023</u>	=	<u>1,804,494</u>	<u>100%</u>	<u>66%</u>
<u>936,608</u>	=	<u>967,148</u>	<u>84%</u>	<u>41%</u>	<u>1,804,495</u>	=	<u>1,841,241</u>	<u>100%</u>	<u>67%</u>
<u>967,149</u>	=	<u>968,369</u>	<u>84%</u>	<u>42%</u>	<u>1,841,242</u>	=	<u>1,878,261</u>	<u>100%</u>	<u>68%</u>
<u>968,370</u>	=	<u>997,894</u>	<u>85%</u>	<u>42%</u>	<u>1,878,262</u>	=	<u>1,915,560</u>	<u>100%</u>	<u>69%</u>
<u>997,895</u>	=	<u>1,001,074</u>	<u>85%</u>	<u>43%</u>	<u>1,915,561</u>	=	<u>1,953,141</u>	<u>100%</u>	<u>70%</u>
<u>1,001,075</u>	=	<u>1,028,856</u>	<u>86%</u>	<u>43%</u>	<u>1,953,142</u>	=	<u>1,991,008</u>	<u>100%</u>	<u>71%</u>
<u>1,028,857</u>	=	<u>1,033,781</u>	<u>86%</u>	<u>44%</u>	<u>1,991,009</u>	=	<u>2,029,163</u>	<u>100%</u>	<u>72%</u>
<u>1,033,782</u>	=	<u>1,060,027</u>	<u>87%</u>	<u>44%</u>	<u>2,029,164</u>	=	<u>2,067,608</u>	<u>100%</u>	<u>73%</u>
<u>1,060,028</u>	=	<u>1,066,487</u>	<u>87%</u>	<u>45%</u>	<u>2,067,609</u>	=	<u>2,106,349</u>	<u>100%</u>	<u>74%</u>
<u>1,066,488</u>	=	<u>1,091,415</u>	<u>88%</u>	<u>45%</u>	<u>2,106,350</u>	=	<u>2,145,386</u>	<u>100%</u>	<u>75%</u>
<u>1,091,416</u>	=	<u>1,099,192</u>	<u>88%</u>	<u>46%</u>	<u>2,145,387</u>	=	<u>2,184,727</u>	<u>100%</u>	<u>76%</u>
<u>1,099,193</u>	=	<u>1,123,020</u>	<u>89%</u>	<u>46%</u>	<u>2,184,728</u>	=	<u>2,224,371</u>	<u>100%</u>	<u>77%</u>
<u>1,123,021</u>	=	<u>1,131,896</u>	<u>89%</u>	<u>47%</u>	<u>2,224,372</u>	=	<u>2,264,325</u>	<u>100%</u>	<u>78%</u>
<u>1,131,897</u>	=	<u>1,154,846</u>	<u>90%</u>	<u>47%</u>	<u>2,264,326</u>	=	<u>2,304,591</u>	<u>100%</u>	<u>79%</u>
<u>1,154,847</u>	=	<u>1,164,603</u>	<u>90%</u>	<u>48%</u>	<u>2,304,592</u>	=	<u>2,345,174</u>	<u>100%</u>	<u>80%</u>
<u>1,164,604</u>	=	<u>1,186,892</u>	<u>91%</u>	<u>48%</u>	<u>2,345,175</u>	=	<u>2,386,079</u>	<u>100%</u>	<u>81%</u>
<u>1,186,893</u>	=	<u>1,197,306</u>	<u>91%</u>	<u>49%</u>	<u>2,386,080</u>	=	<u>2,427,302</u>	<u>100%</u>	<u>82%</u>
<u>1,197,307</u>	=	<u>1,219,162</u>	<u>92%</u>	<u>49%</u>	<u>2,427,303</u>	=	<u>2,468,857</u>	<u>100%</u>	<u>83%</u>
<u>1,219,163</u>	=	<u>1,230,014</u>	<u>92%</u>	<u>50%</u>	<u>2,468,858</u>	=	<u>2,510,738</u>	<u>100%</u>	<u>84%</u>
<u>1,230,015</u>	=	<u>1,251,659</u>	<u>93%</u>	<u>50%</u>	<u>2,510,739</u>	=	<u>2,552,960</u>	<u>100%</u>	<u>85%</u>
<u>1,251,660</u>	=	<u>1,262,719</u>	<u>93%</u>	<u>51%</u>	<u>2,552,961</u>	=	<u>and higher</u>	<u>100%</u>	<u>86%</u>
<u>1,262,720</u>	=	<u>1,284,386</u>	<u>94%</u>	<u>51%</u>					
<u>1,284,387</u>	=	<u>1,295,423</u>	<u>94%</u>	<u>52%</u>					
<u>1,295,424</u>	=	<u>1,317,344</u>	<u>95%</u>	<u>52%</u>					
<u>1,317,345</u>	=	<u>1,328,128</u>	<u>95%</u>	<u>53%</u>					
<u>1,328,129</u>	=	<u>1,350,535</u>	<u>96%</u>	<u>53%</u>					
<u>1,350,536</u>	=	<u>1,360,834</u>	<u>96%</u>	<u>54%</u>					
<u>1,360,835</u>	=	<u>1,383,963</u>	<u>97%</u>	<u>54%</u>					
<u>1,383,964</u>	=	<u>1,393,539</u>	<u>97%</u>	<u>55%</u>					
<u>1,393,540</u>	=	<u>1,417,629</u>	<u>98%</u>	<u>55%</u>					
<u>1,417,630</u>	=	<u>1,426,245</u>	<u>98%</u>	<u>56%</u>					
<u>1,426,246</u>	=	<u>1,451,537</u>	<u>99%</u>	<u>56%</u>					
<u>1,451,538</u>	=	<u>1,458,949</u>	<u>99%</u>	<u>57%</u>					

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
by Risk Classification and Fiscal Year
Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, (~~2020~~) 2021**

(Class	2016	2017	2018	Primary Ratio
101	0.7400	0.6571	0.5775	0.438
103	1.0630	0.9535	0.8528	0.433
104	0.6823	0.6081	0.5376	0.432

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
105	0.8320	0.7412	0.6551	0.503	803	0.4661	0.4085	0.3522	0.537
106	2.1307	1.9093	1.7060	0.466	901	0.8544	0.7619	0.6733	0.442
107	0.7343	0.6567	0.5830	0.412	1002	0.6537	0.5855	0.5215	0.435
108	0.6823	0.6081	0.5376	0.432	1003	0.5503	0.4877	0.4281	0.491
112	0.5148	0.4666	0.4228	0.408	1004	0.3304	0.2901	0.2504	0.480
201	1.3971	1.2488	1.1075	0.374	1005	6.3669	5.6532	4.9791	0.426
202	1.4944	1.3366	1.1869	0.375	1006	0.1676	0.1473	0.1273	0.551
210	0.6122	0.5482	0.4873	0.416	1007	0.2262	0.2015	0.1781	0.457
212	0.6653	0.5943	0.5269	0.421	1101	0.8583	0.7632	0.6738	0.472
214	1.1611	1.0320	0.9071	0.423	1102	1.2903	1.1475	1.0125	0.417
217	0.9036	0.8070	0.7161	0.452	1103	0.8244	0.7285	0.6369	0.480
219	0.6583	0.5860	0.5167	0.432	1104	0.4919	0.4408	0.3931	0.488
301	0.6738	0.6063	0.5445	0.471	1105	0.5682	0.5026	0.4394	0.495
302	1.5105	1.3340	1.1619	0.425	1106	0.2833	0.2534	0.2252	0.537
303	1.4383	1.2859	1.1437	0.415	1108	0.3714	0.3325	0.2958	0.506
306	0.5663	0.5025	0.4409	0.468	1109	1.2517	1.1142	0.9858	0.462
307	0.6570	0.5832	0.5122	0.485	1301	0.4895	0.4312	0.3745	0.501
308	0.4718	0.4225	0.3767	0.514	1303	0.3090	0.2693	0.2304	0.570
403	1.3967	1.2395	1.0891	0.488	1304	0.0165	0.0146	0.0128	0.488
502	0.7754	0.6852	0.5981	0.462	1305	0.4071	0.3583	0.3114	0.496
504	1.4481	1.3060	1.1776	0.423	1401	0.2135	0.1950	0.1795	0.467
507	2.2323	2.0248	1.8401	0.424	1404	0.5881	0.5202	0.4559	0.511
508	0.9229	0.8274	0.7379	0.373	1405	0.5727	0.5049	0.4395	0.520
509	0.6435	0.5733	0.5054	0.375	1407	0.4869	0.4286	0.3725	0.558
510	1.7700	1.6038	1.4556	0.410	1501	0.6324	0.5566	0.4833	0.490
511	1.0684	0.9476	0.8303	0.463	1507	0.4192	0.3722	0.3275	0.519
512	0.9547	0.8564	0.7652	0.454	1701	0.6039	0.5338	0.4668	0.481
513	0.6900	0.6143	0.5426	0.457	1702	1.0232	0.9198	0.8225	0.335
514	0.9904	0.8847	0.7840	0.473	1703	0.6714	0.5977	0.5276	0.402
516	1.0815	0.9680	0.8619	0.446	1704	0.6039	0.5338	0.4668	0.481
517	1.3800	1.2474	1.1281	0.392	1801	0.3416	0.3047	0.2697	0.433
518	0.8544	0.7619	0.6733	0.442	1802	0.5464	0.4875	0.4316	0.433
519	0.9451	0.8370	0.7332	0.473	2002	0.6541	0.5863	0.5232	0.464
521	0.4202	0.3783	0.3400	0.465	2004	0.4638	0.4081	0.3535	0.555
601	0.3698	0.3290	0.2896	0.470	2007	0.5975	0.5359	0.4792	0.470
602	0.4930	0.4359	0.3798	0.406	2008	0.2984	0.2663	0.2364	0.527
603	0.5229	0.4647	0.4084	0.414	2009	0.3169	0.2814	0.2475	0.551
604	0.8359	0.7474	0.6646	0.462	2101	0.5070	0.4549	0.4065	0.522
606	0.4404	0.3881	0.3372	0.546	2102	0.7408	0.6495	0.5614	0.543
607	0.5786	0.5096	0.4431	0.496	2104	0.3122	0.2809	0.2516	0.586
608	0.3234	0.2850	0.2473	0.459	2105	0.4910	0.4338	0.3783	0.524
701	1.3971	1.2488	1.1075	0.374	2106	0.4263	0.3816	0.3398	0.503

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
2201	0.2508	0.2244	0.2000	0.507	3603	0.4355	0.3918	0.3515	0.475
2202	0.4784	0.4284	0.3814	0.470	3604	0.5787	0.5222	0.4700	0.478
2203	0.4105	0.3695	0.3317	0.508	3605	0.3953	0.3511	0.3087	0.516
2204	0.2508	0.2244	0.2000	0.507	3701	0.2638	0.2343	0.2056	0.464
2401	0.3586	0.3182	0.2795	0.449	3702	0.3208	0.2870	0.2551	0.499
2903	0.5833	0.5233	0.4681	0.522	3708	0.5111	0.4555	0.4028	0.505
2904	0.5699	0.5113	0.4563	0.442	3802	0.1669	0.1499	0.1343	0.496
2905	0.3742	0.3343	0.2968	0.505	3808	0.3212	0.2862	0.2527	0.476
2906	0.3920	0.3552	0.3207	0.505	3901	0.1277	0.1132	0.0994	0.597
2907	0.3882	0.3463	0.3065	0.521	3902	0.4078	0.3644	0.3235	0.524
2908	0.7985	0.7170	0.6398	0.513	3903	0.3181	0.2843	0.2523	0.524
2909	0.3325	0.3016	0.2740	0.482	3905	0.1124	0.1003	0.0887	0.586
3101	0.6332	0.5601	0.4895	0.506	3906	0.4105	0.3671	0.3266	0.527
3102	0.2638	0.2343	0.2056	0.464	3909	0.2328	0.2077	0.1839	0.561
3103	0.3169	0.2850	0.2556	0.445	4101	0.2044	0.1819	0.1605	0.510
3104	0.5211	0.4623	0.4060	0.526	4103	0.4615	0.4110	0.3635	0.517
3105	0.6432	0.5778	0.5164	0.516	4107	0.1656	0.1459	0.1267	0.523
3303	0.3119	0.2766	0.2431	0.531	4108	0.1291	0.1147	0.1010	0.538
3304	0.5291	0.4729	0.4204	0.533	4109	0.1725	0.1565	0.1419	0.501
3309	0.3549	0.3168	0.2810	0.510	4201	0.6717	0.5889	0.5076	0.467
3402	0.3953	0.3511	0.3087	0.516	4301	0.7541	0.6775	0.6071	0.527
3403	0.1226	0.1095	0.0970	0.485	4302	0.6664	0.5928	0.5231	0.527
3404	0.3620	0.3197	0.2787	0.548	4304	0.8957	0.8103	0.7338	0.516
3405	0.2366	0.2110	0.1863	0.502	4305	0.9447	0.8250	0.7081	0.519
3406	0.2350	0.2069	0.1798	0.576	4401	0.3119	0.2766	0.2431	0.531
3407	0.5897	0.5231	0.4595	0.475	4402	0.5830	0.5122	0.4435	0.548
3408	0.1860	0.1624	0.1394	0.556	4404	0.3559	0.3168	0.2794	0.525
3409	0.1457	0.1292	0.1134	0.560	4501	0.1488	0.1312	0.1141	0.586
3410	0.1457	0.1292	0.1134	0.560	4502	0.0514	0.0457	0.0403	0.508
3411	0.4294	0.3810	0.3346	0.465	4504	0.1030	0.0906	0.0784	0.611
3412	0.4977	0.4391	0.3825	0.470	4802	0.3432	0.3082	0.2760	0.520
3414	0.5806	0.5155	0.4540	0.478	4803	0.3219	0.2890	0.2583	0.568
3415	0.6487	0.5807	0.5176	0.454	4804	0.4953	0.4468	0.4026	0.522
3501	0.4310	0.3872	0.3460	0.516	4805	0.3360	0.3009	0.2683	0.534
3503	0.2612	0.2331	0.2066	0.522	4806	0.0961	0.0859	0.0764	0.602
3506	0.6569	0.5897	0.5262	0.437	4808	0.3972	0.3557	0.3170	0.489
3509	0.3483	0.3081	0.2698	0.550	4809	0.2679	0.2405	0.2151	0.505
3510	0.2986	0.2674	0.2380	0.518	4810	0.1979	0.1772	0.1580	0.560
3511	0.6208	0.5553	0.4942	0.485	4811	0.4194	0.3791	0.3425	0.539
3512	0.3095	0.2741	0.2392	0.589	4812	0.3947	0.3517	0.3110	0.526
3513	0.3838	0.3471	0.3132	0.502	4813	0.1969	0.1771	0.1588	0.575
3602	0.0812	0.0719	0.0628	0.552	4814	0.1134	0.1030	0.0935	0.565

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
4815	0.2329	0.2115	0.1926	0.579	6108	0.2573	0.2296	0.2026	0.578
4816	0.3209	0.2934	0.2699	0.517	6109	0.0908	0.0799	0.0693	0.513
4900	0.0905	0.0805	0.0709	0.449	6110	0.3779	0.3335	0.2907	0.514
4901	0.0320	0.0284	0.0249	0.485	6120	0.2605	0.2292	0.1986	0.533
4902	0.0795	0.0702	0.0612	0.547	6121	0.2996	0.2635	0.2283	0.533
4903	0.1358	0.1193	0.1031	0.557	6201	0.3630	0.3213	0.2812	0.501
4904	0.0142	0.0126	0.0110	0.563	6202	0.6549	0.5782	0.5038	0.537
4905	0.3473	0.3112	0.2777	0.565	6203	0.0996	0.0894	0.0794	0.633
4906	0.0919	0.0804	0.0692	0.559	6204	0.1241	0.1098	0.0959	0.583
4907	0.0543	0.0485	0.0428	0.598	6205	0.1669	0.1483	0.1304	0.536
4908	0.0774	0.0693	0.0613	0.578	6206	0.1758	0.1549	0.1346	0.587
4909	0.0309	0.0278	0.0245	0.578	6207	0.9096	0.8145	0.7281	0.490
4910	0.3906	0.3467	0.3051	0.508	6208	0.2306	0.2053	0.1814	0.593
4911	0.0445	0.0401	0.0358	0.460	6209	0.2496	0.2247	0.2017	0.534
5001	6.0559	5.4799	4.9656	0.375	6301	0.0993	0.0875	0.0761	0.493
5002	0.4905	0.4315	0.3741	0.533	6303	0.0451	0.0400	0.0349	0.525
5003	1.6180	1.4399	1.2719	0.409	6305	0.0847	0.0747	0.0652	0.583
5004	0.7301	0.6655	0.6096	0.426	6306	0.2826	0.2477	0.2133	0.569
5005	0.6633	0.5934	0.5282	0.401	6308	0.0487	0.0431	0.0377	0.517
5006	0.9050	0.8148	0.7320	0.358	6309	0.1628	0.1444	0.1268	0.559
5101	0.7394	0.6548	0.5738	0.445	6402	0.2362	0.2090	0.1826	0.584
5103	0.6430	0.5780	0.5171	0.502	6403	0.1282	0.1132	0.0988	0.594
5106	0.6430	0.5780	0.5171	0.502	6404	0.2781	0.2487	0.2215	0.550
5108	0.6488	0.5712	0.4963	0.533	6405	0.4849	0.4292	0.3755	0.506
5109	0.4408	0.3893	0.3388	0.492	6406	0.1275	0.1124	0.0978	0.588
5201	0.2451	0.2171	0.1894	0.537	6407	0.2436	0.2161	0.1897	0.538
5204	0.7558	0.6705	0.5895	0.437	6408	0.4453	0.3972	0.3514	0.486
5206	0.3446	0.3095	0.2767	0.440	6409	0.5315	0.4718	0.4149	0.493
5207	0.1341	0.1196	0.1060	0.553	6410	0.2735	0.2403	0.2079	0.547
5208	0.5601	0.5003	0.4435	0.492	6411	0.0464	0.0416	0.0372	0.534
5209	0.4960	0.4397	0.3853	0.494	6501	0.0905	0.0790	0.0678	0.576
5300	0.0854	0.0748	0.0644	0.578	6502	0.0243	0.0215	0.0187	0.535
5301	0.0285	0.0255	0.0225	0.495	6503	0.0630	0.0550	0.0471	0.550
5302	0.0075	0.0066	0.0058	0.534	6504	0.2664	0.2383	0.2114	0.601
5305	0.0399	0.0351	0.0306	0.563	6505	0.1505	0.1324	0.1146	0.654
5306	0.0365	0.0324	0.0284	0.577	6506	0.1097	0.0972	0.0852	0.556
5307	0.5695	0.5001	0.4328	0.502	6509	0.2281	0.2032	0.1792	0.590
5308	0.0791	0.0700	0.0611	0.582	6510	0.3357	0.3013	0.2697	0.385
6103	0.0812	0.0721	0.0633	0.601	6511	0.2448	0.2176	0.1918	0.557
6104	0.3448	0.3045	0.2655	0.563	6512	0.0761	0.0677	0.0599	0.483
6105	0.3678	0.3260	0.2856	0.484	6601	0.1554	0.1387	0.1231	0.527
6107	0.1118	0.1004	0.0890	0.639	6602	0.4862	0.4357	0.3895	0.522

((Class	2016	2017	2018	Primary- Ratio	((Class	2016	2017	2018	Primary- Ratio
6603	0.2455	0.2173	0.1897	0.541	7117	1.0514	0.9386	0.8325	0.517
6604	0.0720	0.0637	0.0555	0.570	7118	1.4321	1.2732	1.1231	0.518
6605	0.2124	0.1884	0.1648	0.539	7119	1.3731	1.2056	1.0443	0.520
6607	0.0971	0.0866	0.0766	0.547	7120	4.7234	4.1252	3.5405	0.519
6608	0.4283	0.3786	0.3300	0.413	7121	5.3466	4.8456	4.3981	0.363
6620	2.5778	2.2419	1.9036	0.584	7122	0.3330	0.2988	0.2674	0.515
6704	0.1172	0.1027	0.0885	0.597	7200	1.4971	1.3085	1.1244	0.475
6705	0.5939	0.5305	0.4709	0.578	7201	1.2082	1.0547	0.9054	0.515
6706	0.2158	0.1953	0.1766	0.506	7202	0.0229	0.0203	0.0177	0.520
6707	12.4046	10.7263	9.0735	0.686	7203	0.0921	0.0837	0.0753	0.598
6708	7.9276	7.3252	6.8242	0.479	7204	0.0000	0.0000	0.0000	0.500
6709	0.2210	0.1958	0.1716	0.570	7205	0.0000	0.0000	0.0000	0.500
6801	0.5806	0.4948	0.4080	0.568	7301	0.5238	0.4764	0.4341	0.481
6802	0.7042	0.6156	0.5292	0.561	7302	0.7194	0.6527	0.5934	0.468
6803	0.4360	0.3879	0.3414	0.359	7307	0.4636	0.4093	0.3577	0.558
6804	0.2403	0.2126	0.1857	0.576	7308	0.2321	0.2086	0.1864	0.569
6809	3.5552	3.2088	2.8710	0.570	7309	0.2340	0.2075	0.1821	0.591
6901	0.0163	0.0163	0.0162	0.746	7400	1.7216	1.5048	1.2930	0.475))
6902	0.7168	0.6426	0.5749	0.424					
6903	4.4373	4.0302	3.6662	0.346					
6904	0.8093	0.7077	0.6084	0.488	Class	2017	2018	2019	Primary Ratio
6905	0.5985	0.5219	0.4455	0.532	101	<u>0.7485</u>	<u>0.6747</u>	<u>0.5739</u>	<u>0.417</u>
6906	0.2374	0.2250	0.2172	0.639	103	<u>0.9666</u>	<u>0.8764</u>	<u>0.7541</u>	<u>0.421</u>
6907	0.7639	0.6729	0.5848	0.556	104	<u>0.6700</u>	<u>0.6032</u>	<u>0.5120</u>	<u>0.415</u>
6908	0.3027	0.2698	0.2383	0.495	105	<u>0.8109</u>	<u>0.7340</u>	<u>0.6285</u>	<u>0.494</u>
6909	0.0974	0.0863	0.0757	0.549	106	<u>1.8604</u>	<u>1.6904</u>	<u>1.4603</u>	<u>0.465</u>
7100	0.0176	0.0155	0.0132	0.546	107	<u>0.6967</u>	<u>0.6280</u>	<u>0.5339</u>	<u>0.417</u>
7101	0.0190	0.0170	0.0151	0.457	108	<u>0.6700</u>	<u>0.6032</u>	<u>0.5120</u>	<u>0.415</u>
7103	0.7345	0.6379	0.5426	0.524	112	<u>0.5068</u>	<u>0.4608</u>	<u>0.3980</u>	<u>0.403</u>
7104	0.0205	0.0182	0.0160	0.519	201	<u>1.4681</u>	<u>1.3206</u>	<u>1.1188</u>	<u>0.366</u>
7105	0.0154	0.0136	0.0120	0.533	202	<u>1.3730</u>	<u>1.2338</u>	<u>1.0434</u>	<u>0.371</u>
7106	0.2500	0.2191	0.1892	0.600	210	<u>0.6135</u>	<u>0.5540</u>	<u>0.4724</u>	<u>0.410</u>
7107	0.2839	0.2532	0.2239	0.577	212	<u>0.6227</u>	<u>0.5615</u>	<u>0.4778</u>	<u>0.429</u>
7108	0.1975	0.1735	0.1501	0.609	214	<u>1.1910</u>	<u>1.0690</u>	<u>0.9014</u>	<u>0.414</u>
7109	0.0928	0.0825	0.0726	0.541	217	<u>0.8693</u>	<u>0.7837</u>	<u>0.6668</u>	<u>0.454</u>
7110	0.3250	0.2932	0.2646	0.423	219	<u>0.6124</u>	<u>0.5484</u>	<u>0.4606</u>	<u>0.463</u>
7111	0.2907	0.2544	0.2187	0.481	301	<u>0.6696</u>	<u>0.6087</u>	<u>0.5257</u>	<u>0.463</u>
7112	0.6463	0.5740	0.5051	0.556	302	<u>1.4908</u>	<u>1.3360</u>	<u>1.1241</u>	<u>0.406</u>
7113	0.3631	0.3220	0.2829	0.556	303	<u>1.3693</u>	<u>1.2341</u>	<u>1.0502</u>	<u>0.412</u>
7114	0.6625	0.5837	0.5077	0.597	306	<u>0.5495</u>	<u>0.4943</u>	<u>0.4184</u>	<u>0.447</u>
7115	0.4742	0.4214	0.3714	0.577	307	<u>0.6495</u>	<u>0.5846</u>	<u>0.4954</u>	<u>0.477</u>
7116	0.3565	0.3207	0.2881	0.450	308	<u>0.4652</u>	<u>0.4224</u>	<u>0.3638</u>	<u>0.515</u>
					403	<u>1.3286</u>	<u>1.1954</u>	<u>1.0128</u>	<u>0.486</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>502</u>	<u>0.6913</u>	<u>0.6193</u>	<u>0.5207</u>	<u>0.468</u>	<u>1305</u>	<u>0.4126</u>	<u>0.3695</u>	<u>0.3105</u>	<u>0.487</u>
<u>504</u>	<u>1.4947</u>	<u>1.3563</u>	<u>1.1689</u>	<u>0.409</u>	<u>1401</u>	<u>0.2174</u>	<u>0.1998</u>	<u>0.1763</u>	<u>0.472</u>
<u>507</u>	<u>2.1186</u>	<u>1.9338</u>	<u>1.6836</u>	<u>0.401</u>	<u>1404</u>	<u>0.6156</u>	<u>0.5546</u>	<u>0.4719</u>	<u>0.512</u>
<u>508</u>	<u>0.8573</u>	<u>0.7707</u>	<u>0.6525</u>	<u>0.361</u>	<u>1405</u>	<u>0.5290</u>	<u>0.4768</u>	<u>0.4051</u>	<u>0.506</u>
<u>509</u>	<u>0.6272</u>	<u>0.5619</u>	<u>0.4718</u>	<u>0.369</u>	<u>1407</u>	<u>0.5343</u>	<u>0.4805</u>	<u>0.4073</u>	<u>0.528</u>
<u>510</u>	<u>1.7101</u>	<u>1.5566</u>	<u>1.3487</u>	<u>0.414</u>	<u>1501</u>	<u>0.6503</u>	<u>0.5822</u>	<u>0.4891</u>	<u>0.490</u>
<u>511</u>	<u>0.9681</u>	<u>0.8724</u>	<u>0.7406</u>	<u>0.460</u>	<u>1507</u>	<u>0.3889</u>	<u>0.3515</u>	<u>0.2999</u>	<u>0.517</u>
<u>512</u>	<u>0.9268</u>	<u>0.8392</u>	<u>0.7195</u>	<u>0.455</u>	<u>1701</u>	<u>0.6012</u>	<u>0.5422</u>	<u>0.4618</u>	<u>0.442</u>
<u>513</u>	<u>0.6384</u>	<u>0.5752</u>	<u>0.4887</u>	<u>0.448</u>	<u>1702</u>	<u>0.9373</u>	<u>0.8432</u>	<u>0.7142</u>	<u>0.322</u>
<u>514</u>	<u>0.9120</u>	<u>0.8250</u>	<u>0.7050</u>	<u>0.467</u>	<u>1703</u>	<u>0.6434</u>	<u>0.5774</u>	<u>0.4874</u>	<u>0.400</u>
<u>516</u>	<u>1.0725</u>	<u>0.9683</u>	<u>0.8263</u>	<u>0.446</u>	<u>1704</u>	<u>0.6012</u>	<u>0.5422</u>	<u>0.4618</u>	<u>0.442</u>
<u>517</u>	<u>1.2906</u>	<u>1.1714</u>	<u>1.0101</u>	<u>0.382</u>	<u>1801</u>	<u>0.3401</u>	<u>0.3063</u>	<u>0.2600</u>	<u>0.418</u>
<u>518</u>	<u>0.8269</u>	<u>0.7446</u>	<u>0.6311</u>	<u>0.420</u>	<u>1802</u>	<u>0.5441</u>	<u>0.4900</u>	<u>0.4160</u>	<u>0.418</u>
<u>519</u>	<u>0.9500</u>	<u>0.8543</u>	<u>0.7234</u>	<u>0.457</u>	<u>2002</u>	<u>0.6175</u>	<u>0.5593</u>	<u>0.4798</u>	<u>0.470</u>
<u>521</u>	<u>0.4467</u>	<u>0.4059</u>	<u>0.3503</u>	<u>0.453</u>	<u>2004</u>	<u>0.4401</u>	<u>0.3959</u>	<u>0.3346</u>	<u>0.552</u>
<u>601</u>	<u>0.3811</u>	<u>0.3430</u>	<u>0.2904</u>	<u>0.468</u>	<u>2007</u>	<u>0.5783</u>	<u>0.5249</u>	<u>0.4523</u>	<u>0.456</u>
<u>602</u>	<u>0.4873</u>	<u>0.4346</u>	<u>0.3620</u>	<u>0.405</u>	<u>2008</u>	<u>0.2979</u>	<u>0.2707</u>	<u>0.2337</u>	<u>0.511</u>
<u>603</u>	<u>0.5539</u>	<u>0.4969</u>	<u>0.4184</u>	<u>0.389</u>	<u>2009</u>	<u>0.3105</u>	<u>0.2816</u>	<u>0.2419</u>	<u>0.522</u>
<u>604</u>	<u>0.8061</u>	<u>0.7310</u>	<u>0.6286</u>	<u>0.443</u>	<u>2101</u>	<u>0.5008</u>	<u>0.4559</u>	<u>0.3944</u>	<u>0.501</u>
<u>606</u>	<u>0.4287</u>	<u>0.3851</u>	<u>0.3251</u>	<u>0.540</u>	<u>2102</u>	<u>0.5599</u>	<u>0.5069</u>	<u>0.4345</u>	<u>0.481</u>
<u>607</u>	<u>0.5812</u>	<u>0.5201</u>	<u>0.4368</u>	<u>0.507</u>	<u>2103</u>	<u>0.9189</u>	<u>0.8197</u>	<u>0.6847</u>	<u>0.563</u>
<u>608</u>	<u>0.3201</u>	<u>0.2858</u>	<u>0.2385</u>	<u>0.450</u>	<u>2104</u>	<u>0.3180</u>	<u>0.2915</u>	<u>0.2548</u>	<u>0.555</u>
<u>701</u>	<u>1.4681</u>	<u>1.3206</u>	<u>1.1188</u>	<u>0.366</u>	<u>2105</u>	<u>0.5345</u>	<u>0.4788</u>	<u>0.4021</u>	<u>0.527</u>
<u>803</u>	<u>0.4669</u>	<u>0.4189</u>	<u>0.3530</u>	<u>0.523</u>	<u>2106</u>	<u>0.4602</u>	<u>0.4164</u>	<u>0.3566</u>	<u>0.502</u>
<u>901</u>	<u>0.8269</u>	<u>0.7446</u>	<u>0.6311</u>	<u>0.420</u>	<u>2201</u>	<u>0.2875</u>	<u>0.2606</u>	<u>0.2242</u>	<u>0.523</u>
<u>1002</u>	<u>0.6140</u>	<u>0.5539</u>	<u>0.4719</u>	<u>0.436</u>	<u>2202</u>	<u>0.4658</u>	<u>0.4218</u>	<u>0.3614</u>	<u>0.467</u>
<u>1003</u>	<u>0.5296</u>	<u>0.4767</u>	<u>0.4044</u>	<u>0.492</u>	<u>2203</u>	<u>0.4343</u>	<u>0.3948</u>	<u>0.3404</u>	<u>0.525</u>
<u>1004</u>	<u>0.3114</u>	<u>0.2778</u>	<u>0.2315</u>	<u>0.477</u>	<u>2204</u>	<u>0.2875</u>	<u>0.2606</u>	<u>0.2242</u>	<u>0.523</u>
<u>1005</u>	<u>6.2942</u>	<u>5.6512</u>	<u>4.7781</u>	<u>0.417</u>	<u>2401</u>	<u>0.3739</u>	<u>0.3354</u>	<u>0.2831</u>	<u>0.453</u>
<u>1006</u>	<u>0.1667</u>	<u>0.1499</u>	<u>0.1268</u>	<u>0.528</u>	<u>2903</u>	<u>0.5528</u>	<u>0.5035</u>	<u>0.4362</u>	<u>0.508</u>
<u>1007</u>	<u>0.2357</u>	<u>0.2124</u>	<u>0.1806</u>	<u>0.452</u>	<u>2904</u>	<u>0.5663</u>	<u>0.5130</u>	<u>0.4398</u>	<u>0.425</u>
<u>1101</u>	<u>0.8929</u>	<u>0.8047</u>	<u>0.6847</u>	<u>0.471</u>	<u>2905</u>	<u>0.3874</u>	<u>0.3509</u>	<u>0.3009</u>	<u>0.515</u>
<u>1102</u>	<u>1.2289</u>	<u>1.1050</u>	<u>0.9366</u>	<u>0.412</u>	<u>2906</u>	<u>0.4135</u>	<u>0.3784</u>	<u>0.3296</u>	<u>0.483</u>
<u>1103</u>	<u>0.7955</u>	<u>0.7139</u>	<u>0.6026</u>	<u>0.472</u>	<u>2907</u>	<u>0.3759</u>	<u>0.3406</u>	<u>0.2920</u>	<u>0.531</u>
<u>1104</u>	<u>0.4789</u>	<u>0.4348</u>	<u>0.3743</u>	<u>0.481</u>	<u>2908</u>	<u>0.7728</u>	<u>0.7004</u>	<u>0.6001</u>	<u>0.524</u>
<u>1105</u>	<u>0.6170</u>	<u>0.5543</u>	<u>0.4684</u>	<u>0.495</u>	<u>2909</u>	<u>0.3367</u>	<u>0.3093</u>	<u>0.2722</u>	<u>0.455</u>
<u>1106</u>	<u>0.2927</u>	<u>0.2653</u>	<u>0.2276</u>	<u>0.538</u>	<u>3101</u>	<u>0.6317</u>	<u>0.5692</u>	<u>0.4833</u>	<u>0.490</u>
<u>1108</u>	<u>0.3485</u>	<u>0.3168</u>	<u>0.2732</u>	<u>0.500</u>	<u>3102</u>	<u>0.2285</u>	<u>0.2057</u>	<u>0.1740</u>	<u>0.461</u>
<u>1109</u>	<u>1.2721</u>	<u>1.1477</u>	<u>0.9790</u>	<u>0.443</u>	<u>3103</u>	<u>0.2970</u>	<u>0.2695</u>	<u>0.2320</u>	<u>0.438</u>
<u>1301</u>	<u>0.4882</u>	<u>0.4376</u>	<u>0.3684</u>	<u>0.492</u>	<u>3104</u>	<u>0.5190</u>	<u>0.4698</u>	<u>0.4022</u>	<u>0.517</u>
<u>1303</u>	<u>0.3082</u>	<u>0.2758</u>	<u>0.2314</u>	<u>0.539</u>	<u>3105</u>	<u>0.6847</u>	<u>0.6242</u>	<u>0.5407</u>	<u>0.495</u>
<u>1304</u>	<u>0.0162</u>	<u>0.0146</u>	<u>0.0124</u>	<u>0.506</u>	<u>3303</u>	<u>0.3069</u>	<u>0.2775</u>	<u>0.2371</u>	<u>0.521</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>3304</u>	<u>0.5563</u>	<u>0.5055</u>	<u>0.4361</u>	<u>0.514</u>	<u>4109</u>	<u>0.1649</u>	<u>0.1510</u>	<u>0.1320</u>	<u>0.496</u>
<u>3309</u>	<u>0.3402</u>	<u>0.3080</u>	<u>0.2641</u>	<u>0.502</u>	<u>4201</u>	<u>0.6307</u>	<u>0.5635</u>	<u>0.4714</u>	<u>0.443</u>
<u>3402</u>	<u>0.3902</u>	<u>0.3526</u>	<u>0.3008</u>	<u>0.506</u>	<u>4301</u>	<u>0.7521</u>	<u>0.6844</u>	<u>0.5919</u>	<u>0.525</u>
<u>3403</u>	<u>0.1123</u>	<u>0.1014</u>	<u>0.0862</u>	<u>0.490</u>	<u>4302</u>	<u>0.6180</u>	<u>0.5597</u>	<u>0.4799</u>	<u>0.501</u>
<u>3404</u>	<u>0.3728</u>	<u>0.3362</u>	<u>0.2857</u>	<u>0.531</u>	<u>4304</u>	<u>0.8942</u>	<u>0.8201</u>	<u>0.7199</u>	<u>0.505</u>
<u>3405</u>	<u>0.2345</u>	<u>0.2119</u>	<u>0.1806</u>	<u>0.492</u>	<u>4305</u>	<u>0.9181</u>	<u>0.8217</u>	<u>0.6901</u>	<u>0.497</u>
<u>3406</u>	<u>0.2339</u>	<u>0.2106</u>	<u>0.1786</u>	<u>0.566</u>	<u>4401</u>	<u>0.3069</u>	<u>0.2775</u>	<u>0.2371</u>	<u>0.521</u>
<u>3407</u>	<u>0.5908</u>	<u>0.5332</u>	<u>0.4545</u>	<u>0.459</u>	<u>4402</u>	<u>0.5520</u>	<u>0.4959</u>	<u>0.4190</u>	<u>0.522</u>
<u>3408</u>	<u>0.2031</u>	<u>0.1814</u>	<u>0.1518</u>	<u>0.544</u>	<u>4404</u>	<u>0.3571</u>	<u>0.3235</u>	<u>0.2773</u>	<u>0.496</u>
<u>3409</u>	<u>0.1489</u>	<u>0.1345</u>	<u>0.1150</u>	<u>0.550</u>	<u>4501</u>	<u>0.1486</u>	<u>0.1337</u>	<u>0.1134</u>	<u>0.578</u>
<u>3410</u>	<u>0.1489</u>	<u>0.1345</u>	<u>0.1150</u>	<u>0.550</u>	<u>4502</u>	<u>0.0521</u>	<u>0.0472</u>	<u>0.0403</u>	<u>0.485</u>
<u>3411</u>	<u>0.4186</u>	<u>0.3762</u>	<u>0.3180</u>	<u>0.472</u>	<u>4504</u>	<u>0.0965</u>	<u>0.0872</u>	<u>0.0744</u>	<u>0.589</u>
<u>3412</u>	<u>0.5104</u>	<u>0.4572</u>	<u>0.3843</u>	<u>0.448</u>	<u>4802</u>	<u>0.3687</u>	<u>0.3356</u>	<u>0.2906</u>	<u>0.507</u>
<u>3414</u>	<u>0.6158</u>	<u>0.5533</u>	<u>0.4682</u>	<u>0.488</u>	<u>4803</u>	<u>0.3432</u>	<u>0.3134</u>	<u>0.2721</u>	<u>0.557</u>
<u>3415</u>	<u>0.7434</u>	<u>0.6705</u>	<u>0.5713</u>	<u>0.477</u>	<u>4804</u>	<u>0.5007</u>	<u>0.4575</u>	<u>0.3984</u>	<u>0.518</u>
<u>3501</u>	<u>0.4588</u>	<u>0.4182</u>	<u>0.3622</u>	<u>0.495</u>	<u>4805</u>	<u>0.3307</u>	<u>0.3017</u>	<u>0.2619</u>	<u>0.525</u>
<u>3503</u>	<u>0.2597</u>	<u>0.2346</u>	<u>0.2003</u>	<u>0.518</u>	<u>4806</u>	<u>0.0978</u>	<u>0.0893</u>	<u>0.0775</u>	<u>0.588</u>
<u>3506</u>	<u>0.6425</u>	<u>0.5805</u>	<u>0.4957</u>	<u>0.444</u>	<u>4808</u>	<u>0.3888</u>	<u>0.3535</u>	<u>0.3054</u>	<u>0.463</u>
<u>3509</u>	<u>0.3523</u>	<u>0.3179</u>	<u>0.2707</u>	<u>0.540</u>	<u>4809</u>	<u>0.2323</u>	<u>0.2114</u>	<u>0.1828</u>	<u>0.490</u>
<u>3510</u>	<u>0.2936</u>	<u>0.2673</u>	<u>0.2311</u>	<u>0.499</u>	<u>4810</u>	<u>0.2048</u>	<u>0.1865</u>	<u>0.1614</u>	<u>0.559</u>
<u>3511</u>	<u>0.6319</u>	<u>0.5740</u>	<u>0.4949</u>	<u>0.463</u>	<u>4811</u>	<u>0.4203</u>	<u>0.3850</u>	<u>0.3365</u>	<u>0.517</u>
<u>3512</u>	<u>0.2959</u>	<u>0.2683</u>	<u>0.2298</u>	<u>0.565</u>	<u>4812</u>	<u>0.3904</u>	<u>0.3542</u>	<u>0.3047</u>	<u>0.506</u>
<u>3513</u>	<u>0.3682</u>	<u>0.3351</u>	<u>0.2894</u>	<u>0.514</u>	<u>4813</u>	<u>0.2007</u>	<u>0.1840</u>	<u>0.1607</u>	<u>0.559</u>
<u>3602</u>	<u>0.0853</u>	<u>0.0770</u>	<u>0.0655</u>	<u>0.533</u>	<u>4814</u>	<u>0.1112</u>	<u>0.1024</u>	<u>0.0903</u>	<u>0.557</u>
<u>3603</u>	<u>0.4042</u>	<u>0.3671</u>	<u>0.3163</u>	<u>0.483</u>	<u>4815</u>	<u>0.2287</u>	<u>0.2110</u>	<u>0.1869</u>	<u>0.571</u>
<u>3604</u>	<u>0.5747</u>	<u>0.5232</u>	<u>0.4523</u>	<u>0.473</u>	<u>4816</u>	<u>0.3113</u>	<u>0.2876</u>	<u>0.2551</u>	<u>0.513</u>
<u>3605</u>	<u>0.3902</u>	<u>0.3526</u>	<u>0.3008</u>	<u>0.506</u>	<u>4900</u>	<u>0.0921</u>	<u>0.0829</u>	<u>0.0701</u>	<u>0.452</u>
<u>3701</u>	<u>0.2285</u>	<u>0.2057</u>	<u>0.1740</u>	<u>0.461</u>	<u>4901</u>	<u>0.0337</u>	<u>0.0303</u>	<u>0.0255</u>	<u>0.476</u>
<u>3702</u>	<u>0.3007</u>	<u>0.2724</u>	<u>0.2334</u>	<u>0.502</u>	<u>4902</u>	<u>0.0833</u>	<u>0.0750</u>	<u>0.0637</u>	<u>0.524</u>
<u>3708</u>	<u>0.4795</u>	<u>0.4361</u>	<u>0.3768</u>	<u>0.469</u>	<u>4903</u>	<u>0.1388</u>	<u>0.1244</u>	<u>0.1049</u>	<u>0.535</u>
<u>3802</u>	<u>0.1691</u>	<u>0.1540</u>	<u>0.1334</u>	<u>0.482</u>	<u>4904</u>	<u>0.0137</u>	<u>0.0124</u>	<u>0.0105</u>	<u>0.556</u>
<u>3808</u>	<u>0.3233</u>	<u>0.2921</u>	<u>0.2494</u>	<u>0.474</u>	<u>4905</u>	<u>0.3162</u>	<u>0.2886</u>	<u>0.2509</u>	<u>0.551</u>
<u>3901</u>	<u>0.1238</u>	<u>0.1123</u>	<u>0.0963</u>	<u>0.581</u>	<u>4906</u>	<u>0.0923</u>	<u>0.0827</u>	<u>0.0695</u>	<u>0.543</u>
<u>3902</u>	<u>0.3951</u>	<u>0.3584</u>	<u>0.3080</u>	<u>0.537</u>	<u>4907</u>	<u>0.0523</u>	<u>0.0477</u>	<u>0.0411</u>	<u>0.599</u>
<u>3903</u>	<u>0.3081</u>	<u>0.2795</u>	<u>0.2403</u>	<u>0.537</u>	<u>4908</u>	<u>0.0765</u>	<u>0.0696</u>	<u>0.0598</u>	<u>0.578</u>
<u>3905</u>	<u>0.1130</u>	<u>0.1029</u>	<u>0.0890</u>	<u>0.566</u>	<u>4909</u>	<u>0.0306</u>	<u>0.0279</u>	<u>0.0239</u>	<u>0.578</u>
<u>3906</u>	<u>0.4060</u>	<u>0.3688</u>	<u>0.3180</u>	<u>0.521</u>	<u>4910</u>	<u>0.3862</u>	<u>0.3484</u>	<u>0.2966</u>	<u>0.496</u>
<u>3909</u>	<u>0.2234</u>	<u>0.2024</u>	<u>0.1735</u>	<u>0.555</u>	<u>4911</u>	<u>0.0452</u>	<u>0.0410</u>	<u>0.0350</u>	<u>0.442</u>
<u>4101</u>	<u>0.2075</u>	<u>0.1874</u>	<u>0.1600</u>	<u>0.519</u>	<u>5001</u>	<u>5.9922</u>	<u>5.4424</u>	<u>4.7016</u>	<u>0.358</u>
<u>4103</u>	<u>0.4630</u>	<u>0.4206</u>	<u>0.3629</u>	<u>0.497</u>	<u>5002</u>	<u>0.4835</u>	<u>0.4341</u>	<u>0.3661</u>	<u>0.523</u>
<u>4107</u>	<u>0.1648</u>	<u>0.1482</u>	<u>0.1255</u>	<u>0.502</u>	<u>5003</u>	<u>1.6646</u>	<u>1.4985</u>	<u>1.2734</u>	<u>0.394</u>
<u>4108</u>	<u>0.1326</u>	<u>0.1198</u>	<u>0.1024</u>	<u>0.533</u>	<u>5004</u>	<u>0.7760</u>	<u>0.7132</u>	<u>0.6289</u>	<u>0.402</u>

<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>	<u>Class</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Primary Ratio</u>
<u>5005</u>	<u>0.7130</u>	<u>0.6424</u>	<u>0.5463</u>	<u>0.382</u>	<u>6308</u>	<u>0.0485</u>	<u>0.0437</u>	<u>0.0371</u>	<u>0.495</u>
<u>5006</u>	<u>0.8863</u>	<u>0.7993</u>	<u>0.6811</u>	<u>0.360</u>	<u>6309</u>	<u>0.1723</u>	<u>0.1559</u>	<u>0.1333</u>	<u>0.535</u>
<u>5101</u>	<u>0.7391</u>	<u>0.6624</u>	<u>0.5576</u>	<u>0.443</u>	<u>6402</u>	<u>0.2271</u>	<u>0.2057</u>	<u>0.1761</u>	<u>0.571</u>
<u>5103</u>	<u>0.6605</u>	<u>0.5997</u>	<u>0.5161</u>	<u>0.503</u>	<u>6403</u>	<u>0.1252</u>	<u>0.1130</u>	<u>0.0962</u>	<u>0.577</u>
<u>5106</u>	<u>0.6605</u>	<u>0.5997</u>	<u>0.5161</u>	<u>0.503</u>	<u>6404</u>	<u>0.2731</u>	<u>0.2488</u>	<u>0.2155</u>	<u>0.533</u>
<u>5108</u>	<u>0.6685</u>	<u>0.5991</u>	<u>0.5041</u>	<u>0.534</u>	<u>6405</u>	<u>0.4830</u>	<u>0.4347</u>	<u>0.3686</u>	<u>0.501</u>
<u>5109</u>	<u>0.4075</u>	<u>0.3658</u>	<u>0.3079</u>	<u>0.491</u>	<u>6406</u>	<u>0.1254</u>	<u>0.1132</u>	<u>0.0962</u>	<u>0.577</u>
<u>5201</u>	<u>0.2495</u>	<u>0.2245</u>	<u>0.1897</u>	<u>0.547</u>	<u>6407</u>	<u>0.2397</u>	<u>0.2165</u>	<u>0.1847</u>	<u>0.528</u>
<u>5204</u>	<u>0.7556</u>	<u>0.6783</u>	<u>0.5730</u>	<u>0.423</u>	<u>6408</u>	<u>0.4742</u>	<u>0.4292</u>	<u>0.3678</u>	<u>0.478</u>
<u>5206</u>	<u>0.3409</u>	<u>0.3094</u>	<u>0.2664</u>	<u>0.416</u>	<u>6409</u>	<u>0.5203</u>	<u>0.4682</u>	<u>0.3969</u>	<u>0.490</u>
<u>5207</u>	<u>0.1270</u>	<u>0.1154</u>	<u>0.0994</u>	<u>0.547</u>	<u>6410</u>	<u>0.2731</u>	<u>0.2451</u>	<u>0.2067</u>	<u>0.539</u>
<u>5208</u>	<u>0.5469</u>	<u>0.4955</u>	<u>0.4247</u>	<u>0.482</u>	<u>6411</u>	<u>0.0408</u>	<u>0.0371</u>	<u>0.0321</u>	<u>0.538</u>
<u>5209</u>	<u>0.5095</u>	<u>0.4586</u>	<u>0.3882</u>	<u>0.492</u>	<u>6501</u>	<u>0.0921</u>	<u>0.0824</u>	<u>0.0692</u>	<u>0.564</u>
<u>5300</u>	<u>0.0813</u>	<u>0.0731</u>	<u>0.0617</u>	<u>0.559</u>	<u>6502</u>	<u>0.0235</u>	<u>0.0212</u>	<u>0.0180</u>	<u>0.507</u>
<u>5301</u>	<u>0.0268</u>	<u>0.0242</u>	<u>0.0208</u>	<u>0.490</u>	<u>6503</u>	<u>0.0670</u>	<u>0.0596</u>	<u>0.0495</u>	<u>0.536</u>
<u>5302</u>	<u>0.0071</u>	<u>0.0064</u>	<u>0.0054</u>	<u>0.528</u>	<u>6504</u>	<u>0.2478</u>	<u>0.2265</u>	<u>0.1968</u>	<u>0.592</u>
<u>5305</u>	<u>0.0377</u>	<u>0.0340</u>	<u>0.0289</u>	<u>0.545</u>	<u>6505</u>	<u>0.1475</u>	<u>0.1333</u>	<u>0.1136</u>	<u>0.640</u>
<u>5306</u>	<u>0.0362</u>	<u>0.0326</u>	<u>0.0277</u>	<u>0.582</u>	<u>6506</u>	<u>0.1127</u>	<u>0.1017</u>	<u>0.0866</u>	<u>0.552</u>
<u>5307</u>	<u>0.5701</u>	<u>0.5099</u>	<u>0.4278</u>	<u>0.500</u>	<u>6509</u>	<u>0.2172</u>	<u>0.1975</u>	<u>0.1701</u>	<u>0.577</u>
<u>5308</u>	<u>0.0778</u>	<u>0.0705</u>	<u>0.0604</u>	<u>0.570</u>	<u>6510</u>	<u>0.3003</u>	<u>0.2706</u>	<u>0.2302</u>	<u>0.385</u>
<u>6103</u>	<u>0.0799</u>	<u>0.0726</u>	<u>0.0624</u>	<u>0.585</u>	<u>6511</u>	<u>0.2383</u>	<u>0.2161</u>	<u>0.1858</u>	<u>0.544</u>
<u>6104</u>	<u>0.3379</u>	<u>0.3051</u>	<u>0.2601</u>	<u>0.545</u>	<u>6512</u>	<u>0.0765</u>	<u>0.0690</u>	<u>0.0590</u>	<u>0.471</u>
<u>6105</u>	<u>0.4142</u>	<u>0.3718</u>	<u>0.3135</u>	<u>0.480</u>	<u>6601</u>	<u>0.1552</u>	<u>0.1411</u>	<u>0.1218</u>	<u>0.511</u>
<u>6107</u>	<u>0.1138</u>	<u>0.1040</u>	<u>0.0898</u>	<u>0.637</u>	<u>6602</u>	<u>0.4895</u>	<u>0.4456</u>	<u>0.3861</u>	<u>0.509</u>
<u>6108</u>	<u>0.2375</u>	<u>0.2157</u>	<u>0.1853</u>	<u>0.576</u>	<u>6603</u>	<u>0.2571</u>	<u>0.2316</u>	<u>0.1964</u>	<u>0.555</u>
<u>6109</u>	<u>0.0897</u>	<u>0.0804</u>	<u>0.0675</u>	<u>0.519</u>	<u>6604</u>	<u>0.0682</u>	<u>0.0616</u>	<u>0.0525</u>	<u>0.556</u>
<u>6110</u>	<u>0.3512</u>	<u>0.3150</u>	<u>0.2652</u>	<u>0.520</u>	<u>6605</u>	<u>0.2249</u>	<u>0.2028</u>	<u>0.1718</u>	<u>0.549</u>
<u>6120</u>	<u>0.2498</u>	<u>0.2245</u>	<u>0.1898</u>	<u>0.514</u>	<u>6607</u>	<u>0.0869</u>	<u>0.0791</u>	<u>0.0684</u>	<u>0.536</u>
<u>6121</u>	<u>0.3333</u>	<u>0.2980</u>	<u>0.2496</u>	<u>0.525</u>	<u>6608</u>	<u>0.4075</u>	<u>0.3640</u>	<u>0.3044</u>	<u>0.400</u>
<u>6201</u>	<u>0.3870</u>	<u>0.3484</u>	<u>0.2955</u>	<u>0.493</u>	<u>6620</u>	<u>2.5436</u>	<u>2.2688</u>	<u>1.8865</u>	<u>0.572</u>
<u>6202</u>	<u>0.6428</u>	<u>0.5798</u>	<u>0.4929</u>	<u>0.521</u>	<u>6704</u>	<u>0.1217</u>	<u>0.1092</u>	<u>0.0920</u>	<u>0.592</u>
<u>6203</u>	<u>0.0951</u>	<u>0.0871</u>	<u>0.0759</u>	<u>0.620</u>	<u>6705</u>	<u>0.5904</u>	<u>0.5382</u>	<u>0.4661</u>	<u>0.573</u>
<u>6204</u>	<u>0.1294</u>	<u>0.1169</u>	<u>0.0999</u>	<u>0.571</u>	<u>6706</u>	<u>0.2113</u>	<u>0.1933</u>	<u>0.1685</u>	<u>0.512</u>
<u>6205</u>	<u>0.1606</u>	<u>0.1452</u>	<u>0.1240</u>	<u>0.526</u>	<u>6707</u>	<u>12.9247</u>	<u>11.6029</u>	<u>9.7842</u>	<u>0.664</u>
<u>6206</u>	<u>0.1822</u>	<u>0.1642</u>	<u>0.1393</u>	<u>0.576</u>	<u>6708</u>	<u>8.1066</u>	<u>7.5046</u>	<u>6.6810</u>	<u>0.485</u>
<u>6207</u>	<u>0.8689</u>	<u>0.7875</u>	<u>0.6774</u>	<u>0.489</u>	<u>6709</u>	<u>0.2098</u>	<u>0.1900</u>	<u>0.1625</u>	<u>0.548</u>
<u>6208</u>	<u>0.2261</u>	<u>0.2059</u>	<u>0.1782</u>	<u>0.594</u>	<u>6801</u>	<u>0.5706</u>	<u>0.5017</u>	<u>0.4073</u>	<u>0.557</u>
<u>6209</u>	<u>0.2433</u>	<u>0.2224</u>	<u>0.1934</u>	<u>0.539</u>	<u>6802</u>	<u>0.7085</u>	<u>0.6341</u>	<u>0.5324</u>	<u>0.552</u>
<u>6301</u>	<u>0.1059</u>	<u>0.0953</u>	<u>0.0808</u>	<u>0.473</u>	<u>6803</u>	<u>0.4198</u>	<u>0.3752</u>	<u>0.3141</u>	<u>0.374</u>
<u>6303</u>	<u>0.0425</u>	<u>0.0384</u>	<u>0.0325</u>	<u>0.520</u>	<u>6804</u>	<u>0.2387</u>	<u>0.2153</u>	<u>0.1830</u>	<u>0.557</u>
<u>6305</u>	<u>0.0828</u>	<u>0.0748</u>	<u>0.0636</u>	<u>0.578</u>	<u>6809</u>	<u>3.3970</u>	<u>3.0978</u>	<u>2.6741</u>	<u>0.564</u>
<u>6306</u>	<u>0.2847</u>	<u>0.2559</u>	<u>0.2162</u>	<u>0.554</u>	<u>6901</u>	<u>0.0175</u>	<u>0.0174</u>	<u>0.0166</u>	<u>0.787</u>

Class	2017	2018	2019	Primary Ratio	Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed				
					Class	2016	2017	2018	Primary Ratio
<u>6902</u>	<u>0.6801</u>	<u>0.6161</u>	<u>0.5296</u>	<u>0.411</u>					
<u>6903</u>	<u>4.0915</u>	<u>3.7086</u>	<u>3.1895</u>	<u>0.343</u>	(Class	2016	2017	2018	Primary Ratio
<u>6904</u>	<u>0.8427</u>	<u>0.7526</u>	<u>0.6291</u>	<u>0.473</u>	540	0.0173	0.0155	0.0137	0.458
<u>6905</u>	<u>0.6377</u>	<u>0.5691</u>	<u>0.4744</u>	<u>0.509</u>	541	0.0068	0.0061	0.0054	0.453
<u>6906</u>	<u>0.2495</u>	<u>0.2390</u>	<u>0.2247</u>	<u>0.619</u>	550	0.0271	0.0242	0.0217	0.415
<u>6907</u>	<u>0.7113</u>	<u>0.6425</u>	<u>0.5478</u>	<u>0.539</u>	551	0.0113	0.0102	0.0093	0.392))
<u>6908</u>	<u>0.2901</u>	<u>0.2622</u>	<u>0.2238</u>	<u>0.483</u>					
<u>6909</u>	<u>0.1013</u>	<u>0.0916</u>	<u>0.0780</u>	<u>0.528</u>	Class	2017	2018	2019	Primary Ratio
<u>7100</u>	<u>0.0170</u>	<u>0.0151</u>	<u>0.0127</u>	<u>0.537</u>	<u>540</u>	<u>0.0161</u>	<u>0.0145</u>	<u>0.0124</u>	<u>0.458</u>
<u>7101</u>	<u>0.0185</u>	<u>0.0167</u>	<u>0.0142</u>	<u>0.461</u>	<u>541</u>	<u>0.0068</u>	<u>0.0061</u>	<u>0.0053</u>	<u>0.438</u>
<u>7103</u>	<u>0.7816</u>	<u>0.6960</u>	<u>0.5791</u>	<u>0.498</u>	<u>550</u>	<u>0.0264</u>	<u>0.0238</u>	<u>0.0205</u>	<u>0.385</u>
<u>7104</u>	<u>0.0197</u>	<u>0.0178</u>	<u>0.0152</u>	<u>0.500</u>	<u>551</u>	<u>0.0103</u>	<u>0.0093</u>	<u>0.0080</u>	<u>0.403</u>
<u>7105</u>	<u>0.0149</u>	<u>0.0136</u>	<u>0.0116</u>	<u>0.517</u>					
<u>7106</u>	<u>0.2552</u>	<u>0.2296</u>	<u>0.1947</u>	<u>0.582</u>					
<u>7107</u>	<u>0.3151</u>	<u>0.2846</u>	<u>0.2427</u>	<u>0.564</u>					
<u>7108</u>	<u>0.2190</u>	<u>0.1973</u>	<u>0.1675</u>	<u>0.603</u>					
<u>7109</u>	<u>0.0861</u>	<u>0.0778</u>	<u>0.0665</u>	<u>0.520</u>					
<u>7110</u>	<u>0.3404</u>	<u>0.3093</u>	<u>0.2673</u>	<u>0.412</u>					
<u>7111</u>	<u>0.2822</u>	<u>0.2511</u>	<u>0.2083</u>	<u>0.476</u>					
<u>7112</u>	<u>0.6411</u>	<u>0.5812</u>	<u>0.4992</u>	<u>0.539</u>					
<u>7113</u>	<u>0.3686</u>	<u>0.3328</u>	<u>0.2839</u>	<u>0.547</u>					
<u>7114</u>	<u>0.6813</u>	<u>0.6154</u>	<u>0.5250</u>	<u>0.585</u>					
<u>7115</u>	<u>0.4734</u>	<u>0.4305</u>	<u>0.3716</u>	<u>0.557</u>					
<u>7116</u>	<u>0.3673</u>	<u>0.3325</u>	<u>0.2851</u>	<u>0.456</u>					
<u>7117</u>	<u>0.9906</u>	<u>0.8974</u>	<u>0.7694</u>	<u>0.511</u>					
<u>7118</u>	<u>1.4155</u>	<u>1.2775</u>	<u>1.0893</u>	<u>0.500</u>					
<u>7119</u>	<u>1.4197</u>	<u>1.2754</u>	<u>1.0793</u>	<u>0.489</u>					
<u>7120</u>	<u>4.5901</u>	<u>4.1084</u>	<u>3.4501</u>	<u>0.497</u>					
<u>7121</u>	<u>6.3024</u>	<u>5.7193</u>	<u>4.9320</u>	<u>0.352</u>					
<u>7122</u>	<u>0.3328</u>	<u>0.3033</u>	<u>0.2632</u>	<u>0.514</u>					
<u>7200</u>	<u>1.5951</u>	<u>1.4168</u>	<u>1.1738</u>	<u>0.477</u>					
<u>7201</u>	<u>1.2905</u>	<u>1.1514</u>	<u>0.9619</u>	<u>0.494</u>					
<u>7202</u>	<u>0.0219</u>	<u>0.0196</u>	<u>0.0165</u>	<u>0.527</u>					
<u>7203</u>	<u>0.0873</u>	<u>0.0802</u>	<u>0.0699</u>	<u>0.586</u>					
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>					
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>					
<u>7301</u>	<u>0.5527</u>	<u>0.5079</u>	<u>0.4470</u>	<u>0.465</u>					
<u>7302</u>	<u>0.6644</u>	<u>0.6101</u>	<u>0.5366</u>	<u>0.437</u>					
<u>7307</u>	<u>0.4695</u>	<u>0.4235</u>	<u>0.3609</u>	<u>0.555</u>					
<u>7308</u>	<u>0.2313</u>	<u>0.2105</u>	<u>0.1816</u>	<u>0.581</u>					
<u>7309</u>	<u>0.2294</u>	<u>0.2083</u>	<u>0.1791</u>	<u>0.585</u>					
<u>7400</u>	<u>1.8343</u>	<u>1.6293</u>	<u>1.3498</u>	<u>0.477</u>					

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-890 Table IV.

Maximum Experience Modifications
For Firms with No Compensable Accidents:
Effective January 1, ((2020)) 2021

Expected Loss Range	Maximum Experience Modification
((+ - 5,410	0.90
5,411 - 6,605	0.89
6,606 - 7,285	0.88
7,286 - 7,965	0.87
7,966 - 8,646	0.86
8,647 - 9,326	0.85
9,327 - 10,006	0.84
10,007 - 10,686	0.83
10,687 - 11,366	0.82
11,367 - 12,070	0.81
12,071 - 12,803	0.80
12,804 - 13,565	0.79
13,566 - 14,356	0.78
14,357 - 15,177	0.77
15,178 - 16,026	0.76
16,027 - 16,905	0.75
16,906 - 17,813	0.74
17,814 - 18,751	0.73
18,752 - 19,717	0.72
19,718 - 20,713	0.71
20,714 - 21,738	0.70
21,739 - 22,792	0.69

Expected Loss Range		Maximum Experience Modification
22,793	- 23,875	0.68
23,876	- 24,988	0.67
24,989	- 26,130	0.66
26,131	- 27,301	0.65
27,302	- 29,057	0.64
29,058	- 31,692	0.63
31,693	- 35,644	0.62
35,645	- 41,572	0.61
41,573	and higher	0.60))
<u>1</u>	= <u>5,383</u>	<u>0.90</u>
<u>5,384</u>	= <u>6,572</u>	<u>0.89</u>
<u>6,573</u>	= <u>7,249</u>	<u>0.88</u>
<u>7,250</u>	= <u>7,925</u>	<u>0.87</u>
<u>7,926</u>	= <u>8,602</u>	<u>0.86</u>
<u>8,603</u>	= <u>9,279</u>	<u>0.85</u>
<u>9,280</u>	= <u>9,956</u>	<u>0.84</u>
<u>9,957</u>	= <u>10,632</u>	<u>0.83</u>
<u>10,633</u>	= <u>11,309</u>	<u>0.82</u>
<u>11,310</u>	= <u>12,010</u>	<u>0.81</u>
<u>12,011</u>	= <u>12,741</u>	<u>0.80</u>
<u>12,742</u>	= <u>13,500</u>	<u>0.79</u>
<u>13,501</u>	= <u>14,288</u>	<u>0.78</u>
<u>14,289</u>	= <u>15,105</u>	<u>0.77</u>
<u>15,106</u>	= <u>15,951</u>	<u>0.76</u>
<u>15,952</u>	= <u>16,826</u>	<u>0.75</u>
<u>16,827</u>	= <u>17,730</u>	<u>0.74</u>
<u>17,731</u>	= <u>18,663</u>	<u>0.73</u>
<u>18,664</u>	= <u>19,625</u>	<u>0.72</u>
<u>19,626</u>	= <u>20,615</u>	<u>0.71</u>
<u>20,616</u>	= <u>21,635</u>	<u>0.70</u>
<u>21,636</u>	= <u>22,684</u>	<u>0.69</u>
<u>22,685</u>	= <u>23,762</u>	<u>0.68</u>
<u>23,763</u>	= <u>24,869</u>	<u>0.67</u>
<u>24,870</u>	= <u>26,004</u>	<u>0.66</u>
<u>26,005</u>	= <u>27,169</u>	<u>0.65</u>
<u>27,170</u>	= <u>28,916</u>	<u>0.64</u>
<u>28,917</u>	= <u>31,536</u>	<u>0.63</u>
<u>31,537</u>	= <u>35,467</u>	<u>0.62</u>
<u>35,468</u>	= <u>41,363</u>	<u>0.61</u>
<u>41,364</u>	and higher	<u>0.60</u>

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry. Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Class	Base Rates Effective January 1, ((2020)) 2021		
	Accident Fund	Stay at Work	Medical Aid Fund
((101	1.3901	0.0215	0.5632
103	1.8152	0.0279	0.9236
104	1.2604	0.0195	0.5415
105	1.2880	0.0196	0.8017
106	3.3331	0.0507	2.0099
107	1.4172	0.0219	0.5720
108	1.2604	0.0195	0.5415
112	0.9017	0.0138	0.4801
201	2.9172	0.0454	0.9669
202	3.0964	0.0482	1.0492
210	1.1673	0.0180	0.4971
212	1.2531	0.0194	0.5283
214	2.2923	0.0356	0.8312
217	1.5613	0.0240	0.7752
219	1.2500	0.0193	0.5074
301	1.0292	0.0156	0.6647
302	3.0488	0.0475	1.0082
303	2.6462	0.0409	1.1352
306	1.0127	0.0156	0.4674
307	1.1142	0.0171	0.5669
308	0.6691	0.0101	0.4826
403	2.3195	0.0356	1.1963
502	1.4215	0.0220	0.5891
504	2.4344	0.0373	1.3043
507	3.6057	0.0549	2.1769
508	1.8655	0.0290	0.6737
509	1.3904	0.0217	0.4198
510	2.9710	0.0454	1.6554
511	1.9568	0.0302	0.8544
512	1.5863	0.0243	0.8749
513	1.1969	0.0184	0.5770
514	1.6711	0.0256	0.9076
516	1.8572	0.0285	0.9385
517	2.4678	0.0380	1.1883
518	1.5782	0.0243	0.7018

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
519	1.6514	0.0254	0.7687	1801	0.6292	0.0097	0.2741
521	0.6497	0.0099	0.4132	1802	1.0067	0.0155	0.4386
601	0.6538	0.0101	0.3184	2002	1.0594	0.0162	0.6050
602	1.0440	0.0163	0.3127	2004	0.7129	0.0109	0.4301
603	1.0483	0.0163	0.3707	2007	0.9299	0.0141	0.5727
604	1.3866	0.0212	0.7452	2008	0.4103	0.0062	0.3041
606	0.6672	0.0102	0.4000	2009	0.4504	0.0068	0.3254
607	0.9750	0.0150	0.4534	2101	0.6980	0.0105	0.5359
608	0.6198	0.0096	0.2319	2102	1.1289	0.0173	0.6211
701	2.9172	0.0454	0.9669	2104	0.3565	0.0052	0.3915
803	0.7544	0.0116	0.3832	2105	0.7864	0.0120	0.4385
901	1.5782	0.0243	0.7018	2106	0.6293	0.0095	0.4255
1002	1.1569	0.0178	0.5510	2201	0.3601	0.0054	0.2514
1003	0.8998	0.0138	0.4696	2202	0.7884	0.0120	0.4422
1004	0.6130	0.0095	0.2480	2203	0.5796	0.0087	0.4391
1005	11.8215	0.1830	4.8087	2204	0.3601	0.0054	0.2514
1006	0.2582	0.0039	0.1505	2401	0.6506	0.0100	0.2806
1007	0.3900	0.0060	0.1912	2903	0.7856	0.0118	0.6281
1101	1.4194	0.0218	0.7283	2904	0.9950	0.0153	0.5089
1102	2.4542	0.0381	0.9397	2905	0.5653	0.0086	0.3696
1103	1.4002	0.0216	0.6559	2906	0.5722	0.0086	0.4623
1104	0.7574	0.0115	0.4848	2907	0.5709	0.0086	0.3926
1105	0.9559	0.0147	0.4765	2908	1.1826	0.0178	0.8704
1106	0.3909	0.0059	0.3031	2909	0.4608	0.0069	0.3789
1108	0.5600	0.0085	0.3779	3101	1.0410	0.0160	0.5449
1109	2.0853	0.0320	1.0587	3102	0.4766	0.0073	0.2167
1301	0.8327	0.0128	0.3889	3103	0.5209	0.0080	0.2957
1303	0.4696	0.0072	0.2558	3104	0.7865	0.0120	0.4881
1304	0.0276	0.0004	0.0140	3105	0.9272	0.0139	0.7000
1305	0.6859	0.0106	0.3195	3303	0.4564	0.0069	0.2946
1401	0.2674	0.0040	0.2479	3304	0.7183	0.0108	0.5462
1404	0.8970	0.0137	0.5108	3309	0.5217	0.0079	0.3405
1405	0.9094	0.0139	0.4886	3402	0.6173	0.0094	0.3702
1407	0.6940	0.0105	0.4395	3403	0.2039	0.0031	0.1142
1501	1.0955	0.0169	0.4840	3404	0.5438	0.0083	0.3440
1507	0.6377	0.0097	0.3929	3405	0.3803	0.0058	0.2260
1701	1.0276	0.0158	0.4808	3406	0.3218	0.0049	0.2253
1702	2.2424	0.0350	0.6752	3407	1.0084	0.0155	0.4910
1703	1.3329	0.0207	0.4779	3408	0.2877	0.0044	0.1569
1704	1.0276	0.0158	0.4808	3409	0.1952	0.0029	0.1449

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
3410	0.1952	0.0029	0.1449	4404	0.5360	0.0081	0.3559
3411	0.7557	0.0116	0.3468	4501	0.2021	0.0030	0.1485
3412	0.8966	0.0139	0.3769	4502	0.0808	0.0012	0.0490
3414	0.9636	0.0148	0.4915	4504	0.1371	0.0021	0.1077
3415	1.0746	0.0165	0.5717	4802	0.4599	0.0069	0.3647
3501	0.6212	0.0093	0.4691	4803	0.3886	0.0057	0.3777
3503	0.3821	0.0058	0.2660	4804	0.6422	0.0096	0.5532
3506	1.1751	0.0181	0.5804	4805	0.4509	0.0067	0.3619
3509	0.4887	0.0074	0.3329	4806	0.1077	0.0016	0.1143
3510	0.4310	0.0065	0.3101	4808	0.6033	0.0092	0.3862
3511	0.9656	0.0147	0.5936	4809	0.3873	0.0058	0.2785
3512	0.4205	0.0063	0.3363	4810	0.2400	0.0036	0.2197
3513	0.5449	0.0082	0.4383	4811	0.5099	0.0075	0.5040
3602	0.1201	0.0018	0.0788	4812	0.5766	0.0087	0.3856
3603	0.6674	0.0101	0.4360	4813	0.2261	0.0033	0.2387
3604	0.8870	0.0134	0.6024	4900	0.1693	0.0026	0.0732
3605	0.6173	0.0094	0.3702	4901	0.0561	0.0009	0.0277
3701	0.4766	0.0073	0.2167	4902	0.1175	0.0018	0.0733
3702	0.4950	0.0075	0.3164	4903	0.2086	0.0032	0.1219
3708	0.7861	0.0120	0.4780	4904	0.0202	0.0003	0.0146
3802	0.2485	0.0038	0.1724	4905	0.4132	0.0061	0.3901
3808	0.5443	0.0083	0.2870	4906	0.1409	0.0022	0.0792
3901	0.1563	0.0023	0.1390	4907	0.0697	0.0010	0.0663
3902	0.5874	0.0089	0.4158	4908	0.1064	0.0016	0.0981
3903	0.4581	0.0069	0.3244	4909	0.0425	0.0006	0.0393
3905	0.1389	0.0021	0.1284	4910	0.6030	0.0092	0.3539
3906	0.5627	0.0085	0.4244	4911	0.0756	0.0012	0.0436
3909	0.3112	0.0046	0.2554	5001	11.0596	0.1704	5.0996
4101	0.3165	0.0048	0.1933	5002	0.7774	0.0119	0.4254
4103	0.6724	0.0102	0.4468	5003	3.1027	0.0482	1.1600
4107	0.2666	0.0041	0.1421	5004	1.1043	0.0167	0.7426
4108	0.1818	0.0027	0.1256	5005	1.2580	0.0195	0.5033
4109	0.2388	0.0036	0.2047	5006	1.8128	0.0281	0.6694
4201	1.2808	0.0199	0.4475	5101	1.3689	0.0212	0.5588
4301	0.9879	0.0148	0.8146	5103	0.9599	0.0145	0.6812
4302	0.9696	0.0147	0.6445	5106	0.9599	0.0145	0.6812
4304	1.1233	0.0167	1.0208	5108	1.0030	0.0153	0.5686
4305	1.5970	0.0246	0.7116	5109	0.7821	0.0120	0.3643
4401	0.4564	0.0069	0.2946	5201	0.3923	0.0060	0.2382
4402	0.8865	0.0135	0.5055	5204	1.3907	0.0215	0.5568

Class	Base Rates Effective January 1, ((2020)) 2021			Class	Base Rates Effective January 1, ((2020)) 2021		
	Accident Fund	Stay at Work	Medical Aid Fund		Accident Fund	Stay at Work	Medical Aid Fund
5206	0.5994	0.0092	0.3085	6407	0.3614	0.0055	0.2343
5207	0.1755	0.0026	0.1432	6408	0.7200	0.0110	0.4125
5208	0.8969	0.0137	0.5358	6409	0.8665	0.0133	0.4665
5209	0.8396	0.0129	0.4292	6410	0.4208	0.0064	0.2394
5300	0.1246	0.0019	0.0768	6411	0.0617	0.0009	0.0512
5301	0.0455	0.0007	0.0268	6501	0.1318	0.0020	0.0779
5302	0.0120	0.0002	0.0068	6502	0.0372	0.0006	0.0220
5305	0.0594	0.0009	0.0388	6503	0.1073	0.0016	0.0531
5306	0.0487	0.0007	0.0384	6504	0.3149	0.0046	0.3247
5307	0.9650	0.0149	0.4350	6505	0.1711	0.0025	0.1690
5308	0.1081	0.0016	0.0828	6506	0.1558	0.0024	0.1095
6103	0.1005	0.0015	0.0908	6509	0.2919	0.0043	0.2626
6104	0.4859	0.0073	0.3320	6510	0.6413	0.0099	0.2590
6105	0.6394	0.0098	0.3100	6511	0.3241	0.0049	0.2514
6107	0.1310	0.0019	0.1572	6512	0.1219	0.0019	0.0670
6108	0.3453	0.0051	0.2944	6601	0.2137	0.0032	0.1584
6109	0.1551	0.0024	0.0761	6602	0.6440	0.0097	0.5045
6110	0.6137	0.0094	0.3249	6603	0.3753	0.0057	0.2372
6120	0.4203	0.0064	0.2241	6604	0.1002	0.0015	0.0725
6121	0.4833	0.0074	0.2577	6605	0.3331	0.0051	0.2130
6201	0.5928	0.0091	0.3153	6607	0.1332	0.0020	0.1040
6202	1.0064	0.0153	0.6073	6608	0.8873	0.0138	0.2780
6203	0.1085	0.0016	0.1318	6620	4.1124	0.0629	2.2269
6204	0.1627	0.0024	0.1254	6704	0.1609	0.0024	0.1108
6205	0.2430	0.0037	0.1660	6705	0.7155	0.0106	0.6674
6206	0.2374	0.0036	0.1753	6706	0.2966	0.0044	0.2438
6207	1.3021	0.0197	0.8903	6707	13.6675	0.2035	11.7244
6208	0.2715	0.0040	0.2595	6708	9.5208	0.1385	10.6427
6209	0.3256	0.0048	0.2890	6709	0.3000	0.0045	0.2274
6301	0.1711	0.0026	0.0785	6801	1.0345	0.0161	0.3489
6303	0.0705	0.0011	0.0417	6802	1.0641	0.0163	0.5922
6305	0.1146	0.0017	0.0863	6803	0.9721	0.0152	0.2527
6306	0.4206	0.0064	0.2511	6804	0.3357	0.0050	0.2490
6308	0.0769	0.0012	0.0434	6809	4.7311	0.0696	4.6841
6309	0.2253	0.0034	0.1646	6901	0.0000	0.0000	0.0555
6402	0.3160	0.0047	0.2452	6902	1.2313	0.0189	0.5980
6403	0.1646	0.0025	0.1333	6903	8.6703	0.1342	3.5153
6404	0.3503	0.0052	0.2960	6904	1.6944	0.0262	0.6754
6405	0.7874	0.0121	0.4246	6905	1.2669	0.0196	0.5005
6406	0.1691	0.0025	0.1271	6906	0.0000	0.0000	0.4530

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
6907	1.1181	0.0170	0.7094	105	1.2504	0.0190	0.7289
6908	0.4940	0.0075	0.2819	106	2.8185	0.0428	1.7145
6909	0.1440	0.0022	0.0992	107	1.3290	0.0205	0.5180
7100	0.0297	0.0005	0.0145	108	1.2781	0.0198	0.4907
7101	0.0333	0.0005	0.0173	112	0.9049	0.0139	0.4370
7103	1.2803	0.0198	0.5068	201	3.0790	0.0479	0.9632
7104	0.0313	0.0005	0.0200	202	2.8843	0.0449	0.9036
7105	0.0227	0.0003	0.0152	210	1.1667	0.0180	0.4737
7106	0.3224	0.0049	0.2345	212	1.1412	0.0176	0.4833
7107	0.3583	0.0053	0.3158	214	2.3836	0.0370	0.7918
7108	0.2481	0.0037	0.1947	217	1.5176	0.0233	0.6853
7109	0.1354	0.0020	0.0936	219	1.1342	0.0175	0.4335
7110	0.5395	0.0082	0.2966	301	1.0423	0.0159	0.6093
7111	0.5386	0.0084	0.2017	302	3.0173	0.0469	0.9669
7112	0.8841	0.0133	0.6604	303	2.5466	0.0393	1.0121
7113	0.4902	0.0074	0.3574	306	1.0139	0.0156	0.4177
7114	0.8413	0.0126	0.6699	307	1.1181	0.0172	0.5170
7115	0.5950	0.0089	0.5084	308	0.6589	0.0100	0.4398
7116	0.5680	0.0087	0.3371	403	2.2339	0.0343	1.0480
7117	1.5308	0.0231	1.0653	502	1.2511	0.0193	0.4925
7118	2.1277	0.0323	1.3439	504	2.6132	0.0401	1.2286
7119	2.1934	0.0337	1.1100	507	3.5714	0.0545	1.9359
7120	7.9850	0.1232	3.5577	508	1.8144	0.0282	0.5632
7121	10.0528	0.1552	4.3895	509	1.3773	0.0215	0.3852
7122	0.4529	0.0068	0.3540	510	2.8667	0.0438	1.5018
7200	2.7813	0.0432	0.9789	511	1.7280	0.0266	0.7712
7201	2.0403	0.0315	0.8739	512	1.5541	0.0238	0.7930
7202	0.0360	0.0005	0.0206	513	1.1391	0.0175	0.4961
7203	0.1129	0.0016	0.1343	514	1.5492	0.0237	0.7958
7204	0.0000	0.0000	0.0000	516	1.8588	0.0286	0.8561
7205	0.0000	0.0000	0.0000	517	2.3709	0.0365	1.0348
7301	0.7228	0.0108	0.6014	518	1.6024	0.0248	0.6173
7302	1.0275	0.0154	0.7680	519	1.6829	0.0259	0.7170
7307	0.6326	0.0096	0.4371	521	0.7158	0.0109	0.3984
7308	0.2835	0.0042	0.2805	601	0.6794	0.0105	0.3013
7309	0.2922	0.0043	0.2516	602	1.0453	0.0163	0.2835
7400	3.1985	0.0497	1.1257))	603	1.1619	0.0181	0.3562
101	1.4036	0.0217	0.5564	604	1.3510	0.0207	0.6988
103	1.6664	0.0256	0.8141	606	0.6560	0.0100	0.3561
104	1.2781	0.0198	0.4907	607	0.9624	0.0148	0.4166

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>608</u>	<u>0.6288</u>	<u>0.0098</u>	<u>0.2096</u>	<u>2102</u>	<u>0.8772</u>	<u>0.0134</u>	<u>0.4864</u>
<u>701</u>	<u>3.0790</u>	<u>0.0479</u>	<u>0.9632</u>	<u>2104</u>	<u>0.3783</u>	<u>0.0056</u>	<u>0.3691</u>
<u>803</u>	<u>0.7507</u>	<u>0.0115</u>	<u>0.3623</u>	<u>2105</u>	<u>0.8668</u>	<u>0.0133</u>	<u>0.4145</u>
<u>901</u>	<u>1.6024</u>	<u>0.0248</u>	<u>0.6173</u>	<u>2106</u>	<u>0.6910</u>	<u>0.0105</u>	<u>0.4064</u>
<u>1002</u>	<u>1.1055</u>	<u>0.0170</u>	<u>0.4749</u>	<u>2201</u>	<u>0.3939</u>	<u>0.0059</u>	<u>0.2661</u>
<u>1003</u>	<u>0.8634</u>	<u>0.0132</u>	<u>0.4217</u>	<u>2202</u>	<u>0.7706</u>	<u>0.0118</u>	<u>0.4031</u>
<u>1004</u>	<u>0.5871</u>	<u>0.0091</u>	<u>0.2192</u>	<u>2203</u>	<u>0.6037</u>	<u>0.0091</u>	<u>0.4239</u>
<u>1005</u>	<u>11.8650</u>	<u>0.1837</u>	<u>4.4426</u>	<u>2204</u>	<u>0.3939</u>	<u>0.0059</u>	<u>0.2661</u>
<u>1006</u>	<u>0.2594</u>	<u>0.0040</u>	<u>0.1407</u>	<u>2401</u>	<u>0.6769</u>	<u>0.0105</u>	<u>0.2701</u>
<u>1007</u>	<u>0.4089</u>	<u>0.0063</u>	<u>0.1844</u>	<u>2903</u>	<u>0.7589</u>	<u>0.0114</u>	<u>0.5567</u>
<u>1101</u>	<u>1.4773</u>	<u>0.0227</u>	<u>0.7010</u>	<u>2904</u>	<u>1.0168</u>	<u>0.0156</u>	<u>0.4750</u>
<u>1102</u>	<u>2.3317</u>	<u>0.0361</u>	<u>0.8575</u>	<u>2905</u>	<u>0.5679</u>	<u>0.0086</u>	<u>0.3576</u>
<u>1103</u>	<u>1.3713</u>	<u>0.0211</u>	<u>0.5884</u>	<u>2906</u>	<u>0.6222</u>	<u>0.0094</u>	<u>0.4518</u>
<u>1104</u>	<u>0.7468</u>	<u>0.0113</u>	<u>0.4477</u>	<u>2907</u>	<u>0.5377</u>	<u>0.0081</u>	<u>0.3593</u>
<u>1105</u>	<u>1.0320</u>	<u>0.0159</u>	<u>0.4755</u>	<u>2908</u>	<u>1.1469</u>	<u>0.0173</u>	<u>0.7608</u>
<u>1106</u>	<u>0.4092</u>	<u>0.0062</u>	<u>0.2844</u>	<u>2909</u>	<u>0.4679</u>	<u>0.0070</u>	<u>0.3727</u>
<u>1108</u>	<u>0.5201</u>	<u>0.0079</u>	<u>0.3428</u>	<u>3101</u>	<u>1.0408</u>	<u>0.0160</u>	<u>0.5089</u>
<u>1109</u>	<u>2.1915</u>	<u>0.0337</u>	<u>0.9911</u>	<u>3102</u>	<u>0.4164</u>	<u>0.0064</u>	<u>0.1780</u>
<u>1301</u>	<u>0.8407</u>	<u>0.0130</u>	<u>0.3594</u>	<u>3103</u>	<u>0.4983</u>	<u>0.0076</u>	<u>0.2609</u>
<u>1303</u>	<u>0.4884</u>	<u>0.0075</u>	<u>0.2314</u>	<u>3104</u>	<u>0.7654</u>	<u>0.0116</u>	<u>0.4662</u>
<u>1304</u>	<u>0.0269</u>	<u>0.0004</u>	<u>0.0129</u>	<u>3105</u>	<u>0.9970</u>	<u>0.0150</u>	<u>0.7015</u>
<u>1305</u>	<u>0.7041</u>	<u>0.0109</u>	<u>0.2943</u>	<u>3303</u>	<u>0.4502</u>	<u>0.0068</u>	<u>0.2708</u>
<u>1401</u>	<u>0.2768</u>	<u>0.0041</u>	<u>0.2359</u>	<u>3304</u>	<u>0.7759</u>	<u>0.0117</u>	<u>0.5291</u>
<u>1404</u>	<u>0.9178</u>	<u>0.0140</u>	<u>0.5054</u>	<u>3309</u>	<u>0.5110</u>	<u>0.0078</u>	<u>0.2997</u>
<u>1405</u>	<u>0.8384</u>	<u>0.0128</u>	<u>0.4420</u>	<u>3402</u>	<u>0.6070</u>	<u>0.0092</u>	<u>0.3435</u>
<u>1407</u>	<u>0.7971</u>	<u>0.0122</u>	<u>0.4288</u>	<u>3403</u>	<u>0.1917</u>	<u>0.0029</u>	<u>0.0984</u>
<u>1501</u>	<u>1.1235</u>	<u>0.0173</u>	<u>0.4614</u>	<u>3404</u>	<u>0.5685</u>	<u>0.0087</u>	<u>0.3298</u>
<u>1507</u>	<u>0.5872</u>	<u>0.0089</u>	<u>0.3407</u>	<u>3405</u>	<u>0.3844</u>	<u>0.0059</u>	<u>0.2048</u>
<u>1701</u>	<u>1.0516</u>	<u>0.0162</u>	<u>0.4628</u>	<u>3406</u>	<u>0.3231</u>	<u>0.0049</u>	<u>0.2021</u>
<u>1702</u>	<u>2.1243</u>	<u>0.0332</u>	<u>0.5753</u>	<u>3407</u>	<u>0.9991</u>	<u>0.0153</u>	<u>0.4734</u>
<u>1703</u>	<u>1.2895</u>	<u>0.0200</u>	<u>0.4317</u>	<u>3408</u>	<u>0.3177</u>	<u>0.0049</u>	<u>0.1542</u>
<u>1704</u>	<u>1.0516</u>	<u>0.0162</u>	<u>0.4628</u>	<u>3409</u>	<u>0.1999</u>	<u>0.0030</u>	<u>0.1350</u>
<u>1801</u>	<u>0.6457</u>	<u>0.0100</u>	<u>0.2501</u>	<u>3410</u>	<u>0.1999</u>	<u>0.0030</u>	<u>0.1350</u>
<u>1802</u>	<u>1.0331</u>	<u>0.0160</u>	<u>0.4001</u>	<u>3411</u>	<u>0.7284</u>	<u>0.0112</u>	<u>0.3158</u>
<u>2002</u>	<u>0.9914</u>	<u>0.0151</u>	<u>0.5337</u>	<u>3412</u>	<u>0.9582</u>	<u>0.0148</u>	<u>0.3519</u>
<u>2004</u>	<u>0.6655</u>	<u>0.0101</u>	<u>0.3871</u>	<u>3414</u>	<u>1.0213</u>	<u>0.0157</u>	<u>0.4672</u>
<u>2007</u>	<u>0.9196</u>	<u>0.0140</u>	<u>0.5143</u>	<u>3415</u>	<u>1.2073</u>	<u>0.0185</u>	<u>0.5934</u>
<u>2008</u>	<u>0.4106</u>	<u>0.0062</u>	<u>0.2873</u>	<u>3501</u>	<u>0.6680</u>	<u>0.0101</u>	<u>0.4699</u>
<u>2009</u>	<u>0.4507</u>	<u>0.0068</u>	<u>0.3034</u>	<u>3503</u>	<u>0.3894</u>	<u>0.0059</u>	<u>0.2342</u>
<u>2101</u>	<u>0.7178</u>	<u>0.0108</u>	<u>0.4904</u>	<u>3506</u>	<u>1.1400</u>	<u>0.0175</u>	<u>0.5228</u>

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>3509</u>	<u>0.5014</u>	<u>0.0076</u>	<u>0.3074</u>	<u>4806</u>	<u>0.1108</u>	<u>0.0016</u>	<u>0.1077</u>
<u>3510</u>	<u>0.4305</u>	<u>0.0065</u>	<u>0.2913</u>	<u>4808</u>	<u>0.6074</u>	<u>0.0092</u>	<u>0.3568</u>
<u>3511</u>	<u>0.9996</u>	<u>0.0152</u>	<u>0.5773</u>	<u>4809</u>	<u>0.3459</u>	<u>0.0052</u>	<u>0.2243</u>
<u>3512</u>	<u>0.4024</u>	<u>0.0060</u>	<u>0.3025</u>	<u>4810</u>	<u>0.2498</u>	<u>0.0037</u>	<u>0.2096</u>
<u>3513</u>	<u>0.5306</u>	<u>0.0080</u>	<u>0.3804</u>	<u>4811</u>	<u>0.5371</u>	<u>0.0080</u>	<u>0.4626</u>
<u>3602</u>	<u>0.1277</u>	<u>0.0019</u>	<u>0.0753</u>	<u>4812</u>	<u>0.5785</u>	<u>0.0088</u>	<u>0.3569</u>
<u>3603</u>	<u>0.6157</u>	<u>0.0093</u>	<u>0.3770</u>	<u>4813</u>	<u>0.2345</u>	<u>0.0035</u>	<u>0.2296</u>
<u>3604</u>	<u>0.8990</u>	<u>0.0136</u>	<u>0.5573</u>	<u>4900</u>	<u>0.1699</u>	<u>0.0026</u>	<u>0.0701</u>
<u>3605</u>	<u>0.6070</u>	<u>0.0092</u>	<u>0.3435</u>	<u>4901</u>	<u>0.0607</u>	<u>0.0009</u>	<u>0.0263</u>
<u>3701</u>	<u>0.4164</u>	<u>0.0064</u>	<u>0.1780</u>	<u>4902</u>	<u>0.1262</u>	<u>0.0019</u>	<u>0.0695</u>
<u>3702</u>	<u>0.4610</u>	<u>0.0070</u>	<u>0.2768</u>	<u>4903</u>	<u>0.2197</u>	<u>0.0034</u>	<u>0.1115</u>
<u>3708</u>	<u>0.7478</u>	<u>0.0114</u>	<u>0.4404</u>	<u>4904</u>	<u>0.0193</u>	<u>0.0003</u>	<u>0.0128</u>
<u>3802</u>	<u>0.2523</u>	<u>0.0038</u>	<u>0.1632</u>	<u>4905</u>	<u>0.3826</u>	<u>0.0057</u>	<u>0.3317</u>
<u>3808</u>	<u>0.5340</u>	<u>0.0082</u>	<u>0.2727</u>	<u>4906</u>	<u>0.1423</u>	<u>0.0022</u>	<u>0.0731</u>
<u>3901</u>	<u>0.1557</u>	<u>0.0023</u>	<u>0.1246</u>	<u>4907</u>	<u>0.0667</u>	<u>0.0010</u>	<u>0.0619</u>
<u>3902</u>	<u>0.5431</u>	<u>0.0082</u>	<u>0.3786</u>	<u>4908</u>	<u>0.1041</u>	<u>0.0015</u>	<u>0.0925</u>
<u>3903</u>	<u>0.4236</u>	<u>0.0064</u>	<u>0.2953</u>	<u>4909</u>	<u>0.0416</u>	<u>0.0006</u>	<u>0.0370</u>
<u>3905</u>	<u>0.1399</u>	<u>0.0021</u>	<u>0.1217</u>	<u>4910</u>	<u>0.6124</u>	<u>0.0094</u>	<u>0.3213</u>
<u>3906</u>	<u>0.5613</u>	<u>0.0085</u>	<u>0.3871</u>	<u>4911</u>	<u>0.0814</u>	<u>0.0012</u>	<u>0.0394</u>
<u>3909</u>	<u>0.3036</u>	<u>0.0046</u>	<u>0.2205</u>	<u>5001</u>	<u>11.2701</u>	<u>0.1738</u>	<u>4.7411</u>
<u>4101</u>	<u>0.3129</u>	<u>0.0048</u>	<u>0.1812</u>	<u>5002</u>	<u>0.7710</u>	<u>0.0118</u>	<u>0.3889</u>
<u>4103</u>	<u>0.6672</u>	<u>0.0101</u>	<u>0.4325</u>	<u>5003</u>	<u>3.2016</u>	<u>0.0496</u>	<u>1.1534</u>
<u>4107</u>	<u>0.2695</u>	<u>0.0041</u>	<u>0.1316</u>	<u>5004</u>	<u>1.1860</u>	<u>0.0179</u>	<u>0.7743</u>
<u>4108</u>	<u>0.1887</u>	<u>0.0029</u>	<u>0.1161</u>	<u>5005</u>	<u>1.4130</u>	<u>0.0219</u>	<u>0.4948</u>
<u>4109</u>	<u>0.2315</u>	<u>0.0035</u>	<u>0.1852</u>	<u>5006</u>	<u>1.7961</u>	<u>0.0279</u>	<u>0.6108</u>
<u>4201</u>	<u>1.2306</u>	<u>0.0191</u>	<u>0.3961</u>	<u>5101</u>	<u>1.3748</u>	<u>0.0213</u>	<u>0.5126</u>
<u>4301</u>	<u>1.0025</u>	<u>0.0151</u>	<u>0.7404</u>	<u>5103</u>	<u>0.9952</u>	<u>0.0151</u>	<u>0.6366</u>
<u>4302</u>	<u>0.9385</u>	<u>0.0143</u>	<u>0.5555</u>	<u>5106</u>	<u>0.9952</u>	<u>0.0151</u>	<u>0.6366</u>
<u>4304</u>	<u>1.1022</u>	<u>0.0164</u>	<u>0.9506</u>	<u>5108</u>	<u>1.0402</u>	<u>0.0159</u>	<u>0.5269</u>
<u>4305</u>	<u>1.5587</u>	<u>0.0240</u>	<u>0.6659</u>	<u>5109</u>	<u>0.7288</u>	<u>0.0112</u>	<u>0.3228</u>
<u>4401</u>	<u>0.4502</u>	<u>0.0068</u>	<u>0.2708</u>	<u>5201</u>	<u>0.3903</u>	<u>0.0059</u>	<u>0.2237</u>
<u>4402</u>	<u>0.8727</u>	<u>0.0134</u>	<u>0.4382</u>	<u>5204</u>	<u>1.4318</u>	<u>0.0222</u>	<u>0.5076</u>
<u>4404</u>	<u>0.5587</u>	<u>0.0085</u>	<u>0.3288</u>	<u>5206</u>	<u>0.6048</u>	<u>0.0093</u>	<u>0.2932</u>
<u>4501</u>	<u>0.2042</u>	<u>0.0031</u>	<u>0.1344</u>	<u>5207</u>	<u>0.1685</u>	<u>0.0025</u>	<u>0.1272</u>
<u>4502</u>	<u>0.0841</u>	<u>0.0013</u>	<u>0.0458</u>	<u>5208</u>	<u>0.8832</u>	<u>0.0135</u>	<u>0.4899</u>
<u>4504</u>	<u>0.1286</u>	<u>0.0019</u>	<u>0.0968</u>	<u>5209</u>	<u>0.8668</u>	<u>0.0133</u>	<u>0.4160</u>
<u>4802</u>	<u>0.5077</u>	<u>0.0077</u>	<u>0.3545</u>	<u>5300</u>	<u>0.1192</u>	<u>0.0018</u>	<u>0.0685</u>
<u>4803</u>	<u>0.4192</u>	<u>0.0062</u>	<u>0.3681</u>	<u>5301</u>	<u>0.0421</u>	<u>0.0006</u>	<u>0.0242</u>
<u>4804</u>	<u>0.6524</u>	<u>0.0098</u>	<u>0.5183</u>	<u>5302</u>	<u>0.0113</u>	<u>0.0002</u>	<u>0.0061</u>
<u>4805</u>	<u>0.4375</u>	<u>0.0065</u>	<u>0.3436</u>	<u>5305</u>	<u>0.0572</u>	<u>0.0009</u>	<u>0.0347</u>

Base Rates Effective January 1, ((2020)) 2021				Base Rates Effective January 1, ((2020)) 2021			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>5306</u>	<u>0.0489</u>	<u>0.0007</u>	<u>0.0337</u>	<u>6504</u>	<u>0.2881</u>	<u>0.0042</u>	<u>0.2920</u>
<u>5307</u>	<u>0.9641</u>	<u>0.0149</u>	<u>0.4012</u>	<u>6505</u>	<u>0.1688</u>	<u>0.0025</u>	<u>0.1524</u>
<u>5308</u>	<u>0.1061</u>	<u>0.0016</u>	<u>0.0790</u>	<u>6506</u>	<u>0.1593</u>	<u>0.0024</u>	<u>0.1018</u>
<u>6103</u>	<u>0.0985</u>	<u>0.0015</u>	<u>0.0833</u>	<u>6509</u>	<u>0.2790</u>	<u>0.0042</u>	<u>0.2354</u>
<u>6104</u>	<u>0.4808</u>	<u>0.0073</u>	<u>0.3043</u>	<u>6510</u>	<u>0.5890</u>	<u>0.0091</u>	<u>0.2114</u>
<u>6105</u>	<u>0.7307</u>	<u>0.0113</u>	<u>0.3123</u>	<u>6511</u>	<u>0.3178</u>	<u>0.0048</u>	<u>0.2289</u>
<u>6107</u>	<u>0.1332</u>	<u>0.0019</u>	<u>0.1498</u>	<u>6512</u>	<u>0.1245</u>	<u>0.0019</u>	<u>0.0626</u>
<u>6108</u>	<u>0.3188</u>	<u>0.0048</u>	<u>0.2572</u>	<u>6601</u>	<u>0.2138</u>	<u>0.0032</u>	<u>0.1497</u>
<u>6109</u>	<u>0.1515</u>	<u>0.0023</u>	<u>0.0699</u>	<u>6602</u>	<u>0.6587</u>	<u>0.0099</u>	<u>0.4675</u>
<u>6110</u>	<u>0.5715</u>	<u>0.0088</u>	<u>0.2769</u>	<u>6603</u>	<u>0.3775</u>	<u>0.0057</u>	<u>0.2332</u>
<u>6120</u>	<u>0.4073</u>	<u>0.0062</u>	<u>0.2026</u>	<u>6604</u>	<u>0.0955</u>	<u>0.0014</u>	<u>0.0640</u>
<u>6121</u>	<u>0.5516</u>	<u>0.0085</u>	<u>0.2489</u>	<u>6605</u>	<u>0.3476</u>	<u>0.0053</u>	<u>0.2114</u>
<u>6201</u>	<u>0.6345</u>	<u>0.0097</u>	<u>0.3159</u>	<u>6607</u>	<u>0.1188</u>	<u>0.0018</u>	<u>0.0905</u>
<u>6202</u>	<u>0.9876</u>	<u>0.0150</u>	<u>0.5673</u>	<u>6608</u>	<u>0.8603</u>	<u>0.0134</u>	<u>0.2452</u>
<u>6203</u>	<u>0.1013</u>	<u>0.0015</u>	<u>0.1180</u>	<u>6620</u>	<u>4.0897</u>	<u>0.0627</u>	<u>2.0253</u>
<u>6204</u>	<u>0.1694</u>	<u>0.0026</u>	<u>0.1196</u>	<u>6704</u>	<u>0.1680</u>	<u>0.0025</u>	<u>0.1067</u>
<u>6205</u>	<u>0.2358</u>	<u>0.0036</u>	<u>0.1471</u>	<u>6705</u>	<u>0.7027</u>	<u>0.0104</u>	<u>0.6296</u>
<u>6206</u>	<u>0.2496</u>	<u>0.0038</u>	<u>0.1662</u>	<u>6706</u>	<u>0.2874</u>	<u>0.0043</u>	<u>0.2248</u>
<u>6207</u>	<u>1.2684</u>	<u>0.0193</u>	<u>0.7764</u>	<u>6707</u>	<u>14.0761</u>	<u>0.2101</u>	<u>11.4756</u>
<u>6208</u>	<u>0.2538</u>	<u>0.0037</u>	<u>0.2426</u>	<u>6708</u>	<u>9.7896</u>	<u>0.1436</u>	<u>10.0015</u>
<u>6209</u>	<u>0.3088</u>	<u>0.0046</u>	<u>0.2665</u>	<u>6709</u>	<u>0.2939</u>	<u>0.0044</u>	<u>0.2020</u>
<u>6301</u>	<u>0.1805</u>	<u>0.0028</u>	<u>0.0819</u>	<u>6801</u>	<u>1.0093</u>	<u>0.0157</u>	<u>0.3136</u>
<u>6303</u>	<u>0.0670</u>	<u>0.0010</u>	<u>0.0367</u>	<u>6802</u>	<u>1.0678</u>	<u>0.0163</u>	<u>0.5439</u>
<u>6305</u>	<u>0.1109</u>	<u>0.0017</u>	<u>0.0779</u>	<u>6803</u>	<u>0.9244</u>	<u>0.0144</u>	<u>0.2379</u>
<u>6306</u>	<u>0.4190</u>	<u>0.0064</u>	<u>0.2395</u>	<u>6804</u>	<u>0.3430</u>	<u>0.0052</u>	<u>0.2195</u>
<u>6308</u>	<u>0.0782</u>	<u>0.0012</u>	<u>0.0398</u>	<u>6809</u>	<u>4.6235</u>	<u>0.0687</u>	<u>3.9823</u>
<u>6309</u>	<u>0.2468</u>	<u>0.0037</u>	<u>0.1591</u>	<u>6901</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0602</u>
<u>6402</u>	<u>0.3021</u>	<u>0.0045</u>	<u>0.2235</u>	<u>6902</u>	<u>1.1890</u>	<u>0.0183</u>	<u>0.5370</u>
<u>6403</u>	<u>0.1652</u>	<u>0.0025</u>	<u>0.1169</u>	<u>6903</u>	<u>8.2534</u>	<u>0.1279</u>	<u>2.9400</u>
<u>6404</u>	<u>0.3528</u>	<u>0.0053</u>	<u>0.2701</u>	<u>6904</u>	<u>1.7873</u>	<u>0.0277</u>	<u>0.6802</u>
<u>6405</u>	<u>0.7843</u>	<u>0.0120</u>	<u>0.3922</u>	<u>6905</u>	<u>1.3775</u>	<u>0.0214</u>	<u>0.4906</u>
<u>6406</u>	<u>0.1674</u>	<u>0.0025</u>	<u>0.1139</u>	<u>6906</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.4429</u>
<u>6407</u>	<u>0.3582</u>	<u>0.0054</u>	<u>0.2134</u>	<u>6907</u>	<u>1.0270</u>	<u>0.0156</u>	<u>0.6426</u>
<u>6408</u>	<u>0.7580</u>	<u>0.0116</u>	<u>0.4133</u>	<u>6908</u>	<u>0.4855</u>	<u>0.0074</u>	<u>0.2529</u>
<u>6409</u>	<u>0.8580</u>	<u>0.0132</u>	<u>0.4128</u>	<u>6909</u>	<u>0.1540</u>	<u>0.0023</u>	<u>0.0935</u>
<u>6410</u>	<u>0.4207</u>	<u>0.0064</u>	<u>0.2213</u>	<u>7100</u>	<u>0.0285</u>	<u>0.0004</u>	<u>0.0128</u>
<u>6411</u>	<u>0.0538</u>	<u>0.0008</u>	<u>0.0421</u>	<u>7101</u>	<u>0.0326</u>	<u>0.0005</u>	<u>0.0162</u>
<u>6501</u>	<u>0.1353</u>	<u>0.0021</u>	<u>0.0716</u>	<u>7103</u>	<u>1.3868</u>	<u>0.0215</u>	<u>0.4972</u>
<u>6502</u>	<u>0.0377</u>	<u>0.0006</u>	<u>0.0194</u>	<u>7104</u>	<u>0.0308</u>	<u>0.0005</u>	<u>0.0181</u>
<u>6503</u>	<u>0.1163</u>	<u>0.0018</u>	<u>0.0482</u>	<u>7105</u>	<u>0.0226</u>	<u>0.0003</u>	<u>0.0139</u>

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>7106</u>	<u>0.3321</u>	<u>0.0050</u>	<u>0.2178</u>
<u>7107</u>	<u>0.4243</u>	<u>0.0064</u>	<u>0.2936</u>
<u>7108</u>	<u>0.2719</u>	<u>0.0041</u>	<u>0.1985</u>
<u>7109</u>	<u>0.1300</u>	<u>0.0020</u>	<u>0.0787</u>
<u>7110</u>	<u>0.5791</u>	<u>0.0089</u>	<u>0.2885</u>
<u>7111</u>	<u>0.5321</u>	<u>0.0083</u>	<u>0.1774</u>
<u>7112</u>	<u>0.8673</u>	<u>0.0131</u>	<u>0.5999</u>
<u>7113</u>	<u>0.5073</u>	<u>0.0077</u>	<u>0.3250</u>
<u>7114</u>	<u>0.8570</u>	<u>0.0129</u>	<u>0.6360</u>
<u>7115</u>	<u>0.5869</u>	<u>0.0088</u>	<u>0.4755</u>
<u>7116</u>	<u>0.5997</u>	<u>0.0092</u>	<u>0.3115</u>
<u>7117</u>	<u>1.4666</u>	<u>0.0222</u>	<u>0.9268</u>
<u>7118</u>	<u>2.1989</u>	<u>0.0336</u>	<u>1.1804</u>
<u>7119</u>	<u>2.3137</u>	<u>0.0355</u>	<u>1.0812</u>
<u>7120</u>	<u>7.7935</u>	<u>0.1201</u>	<u>3.3295</u>
<u>7121</u>	<u>12.2022</u>	<u>0.1886</u>	<u>4.8007</u>
<u>7122</u>	<u>0.4414</u>	<u>0.0066</u>	<u>0.3372</u>
<u>7200</u>	<u>2.9834</u>	<u>0.0464</u>	<u>0.9284</u>
<u>7201</u>	<u>2.2410</u>	<u>0.0347</u>	<u>0.8445</u>
<u>7202</u>	<u>0.0341</u>	<u>0.0005</u>	<u>0.0177</u>
<u>7203</u>	<u>0.1088</u>	<u>0.0016</u>	<u>0.1158</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7301</u>	<u>0.7631</u>	<u>0.0114</u>	<u>0.6095</u>
<u>7302</u>	<u>0.9734</u>	<u>0.0147</u>	<u>0.6903</u>
<u>7307</u>	<u>0.6305</u>	<u>0.0095</u>	<u>0.4056</u>
<u>7308</u>	<u>0.2847</u>	<u>0.0042</u>	<u>0.2545</u>

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>7309</u>	<u>0.2806</u>	<u>0.0042</u>	<u>0.2368</u>
<u>7400</u>	<u>3.4309</u>	<u>0.0534</u>	<u>1.0676</u>

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective
January 1, ((2020)) 2021**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((540	0.0302	0.0005	0.0146	0.0010
541	0.0112	0.0002	0.0062	0.0010
550	0.0488	0.0008	0.0219	0.0010
551	0.0202	0.0003	0.0096	0.0010))
540	0.0281	0.0004	0.0126	0.0011
541	0.0115	0.0002	0.0058	0.0011
550	0.0498	0.0008	0.0197	0.0011
551	0.0184	0.0003	0.0081	0.0011

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-89507 Horse racing rates. Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

Base Rates Effective January 1, ((2020)) 2021

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	71.41**	1.23**	73.88**	12.25**	158.77**
6626	0.6126***	0.0105***	0.6744***	0.1225***	1.4200***
6627	9.8330****	0.1700****	8.4680****	0.9190****	19.3900****))
<u>6618</u>	<u>74.00*</u>	<u>1.00*</u>	<u>74.00*</u>	<u>1.00*</u>	<u>150.00*</u>
<u>6625</u>	<u>76.95**</u>	<u>1.32**</u>	<u>71.84**</u>	<u>13.72**</u>	<u>163.83**</u>
<u>6626</u>	<u>0.5888***</u>	<u>0.0101***</u>	<u>0.6139***</u>	<u>0.1372***</u>	<u>1.3500***</u>
<u>6627</u>	<u>10.5590****</u>	<u>0.1810****</u>	<u>8.2610****</u>	<u>1.0290****</u>	<u>20.0300****</u>

*This rate is calculated on a percentage of ownership in a horse or horses.

**This rate is calculated per month.

***This rate is calculated per horse per day.

***This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

AMENDATORY SECTION (Amending WSR 20-12-086, filed 6/2/20, effective 7/3/20)

WAC 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.

Base Rates Effective

~~(March 30, 2020)~~ **January 1, 2021**

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
((4814	0.1194	0.0017	0.1456	0.1225
4815	0.2216	0.0032	0.3035	0.1225
4816	0.3572	0.0052	0.4070	0.1225))
4814	0.1175	0.0017	0.1330	0.1372
4815	0.2176	0.0031	0.2776	0.1372
4816	0.3514	0.0051	0.3725	0.1372

AMENDATORY SECTION (Amending WSR 18-24-073, filed 11/30/18, effective 1/1/19)

WAC 296-17-901 Risk classification hazard group table. Effective June 30, 2017.

Risk Classification	Hazard Group
101	9
103	9
104	((8)) 9
105	4
106	7
107	9
108	9
112	7
201	9
202	9
210	9
212	9
214	8
217	8
219	8
301	5
302	9
303	9
306	8
307	7
308	3
403	7
502	8

Risk Classification	Hazard Group
504	9
507	8
508	9
509	9
510	7
511	7
512	9
513	7
514	6
516	8
517	9
518	9
519	8
521	8
540	9
541	9
550	9
551	9
601	7
602	8
603	9
604	7
606	4
607	6
608	7
701	((8)) 9
803	4
901	9
1002	7
1003	6
1004	5
1005	8
1006	4
1007	7
1101	5
1102	8
1103	8
1104	3
1105	7
1106	6

Risk Classification	Hazard Group	Risk Classification	Hazard Group
1108	6	3103	7
1109	7	3104	6
1301	3	3105	5
1303	3	3303	3
1304	5	3304	3
1305	6	3309	6
1401	8	3402	6
1404	3	3403	6
1405	3	3404	4
1407	4	3405	3
1501	5	3406	1
1507	6	3407	7
1701	6	3408	1
1702	9	3409	((+)) <u>2</u>
1703	9	3410	2
1704	6	3411	6
1801	7	3412	8
1802	((6)) <u>7</u>	3414	7
2002	6	3415	9
2004	4	3501	((6)) <u>3</u>
2007	7	3503	3
2008	6	3506	5
2009	3	3509	1
2101	6	3510	3
2102	5	3511	6
<u>2103</u>	<u>5</u>	3512	3
2104	2	3513	5
2105	3	3602	3
2106	5	3603	4
2201	4	3604	7
2202	5	3605	((5)) <u>6</u>
2203	3	3701	6
2204	4	3702	4
2401	4	3708	5
2903	4	3802	4
2904	4	3808	7
2905	5	3901	1
2906	5	3902	3
2907	2	3903	((6)) <u>3</u>
2908	7	3905	1
2909	4	3906	4
3101	5	3909	5
3102	6	4101	5

Risk Classification	Hazard Group	Risk Classification	Hazard Group
4103	5	5002	4
4107	6	5003	9
4108	3	5004	7
4109	4	5005	9
4201	6	5006	9
4301	4	5101	8
4302	4	5103	4
4304	5	5106	((3)) <u>4</u>
4305	5	5108	5
4401	((6)) <u>3</u>	5109	6
4402	1	5201	4
4404	6	5204	8
4501	1	5206	7
4502	5	5207	3
4504	1	5208	5
4601	6	5209	6
4802	6	5300	1
4803	2	5301	3
4804	2	5302	3
4805	2	5305	2
4806	3	5306	1
4808	6	5307	4
4809	3	5308	1
4810	2	6103	1
4811	3	6104	3
4812	3	6105	5
4813	3	6107	1
4814	2	6108	1
4815	1	6109	4
4816	5	6110	4
4900	9	6120	3
4901	5	6121	7
4902	3	6201	7
4903	2	6202	6
4904	2	6203	1
4905	1	6204	2
4906	2	6205	3
4907	3	6206	2
4908	1	6207	6
4909	((5)) <u>1</u>	6208	1
4910	6	6209	4
4911	6	6301	7
5001	9	6303	5

Risk Classification	Hazard Group	Risk Classification	Hazard Group
6305	1	6901	1
6306	4	6902	9
6308	5	6903	9
6309	3	6904	4
6402	1	6905	3
6403	2	6906	1
6404	3	6907	5
6405	5	6908	4
6406	((3)) <u>1</u>	6909	3
6407	2	7100	7
6408	7	7101	7
6409	6	7102	3
6410	3	7103	5
6411	((+)) <u>3</u>	7104	3
6501	1	7105	3
6502	3	7106	3
6503	4	7107	2
6504	1	7108	5
6505	1	7109	4
6506	2	7110	5
6509	2	7111	3
6510	8	7112	3
6511	3	7113	3
6512	7	7114	5
6601	4	7115	3
6602	4	7116	8
6603	4	7117	5
6604	1	7118	8
6605	2	7119	6
6607	4	7120	9
6608	9	7121	9
6620	1	7122	5
6704	1	7200	6
6705	1	7201	6
6706	4	7202	5
6707	1	7203	1
6708	7	7301	6
6709	3	7302	7
6801	5	7307	4
6802	3	7308	3
6803	9	7309	1
6804	4	7400	((5)) <u>6</u>
6809	1		

Risk Classification	Hazard Group
The following classes have no hazard group assigned to them	
6618	
6625	
6626	
6627	
7204	
7205	

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ~~((61.25 mils (\$0.06125)))~~ 68.6 mils (\$0.0686) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

AMENDATORY SECTION (Amending WSR 12-21-054, filed 10/15/12, effective 12/14/12)

WAC 296-17B-530 Determining case incurred losses. If a claim is closed, we will use the actual losses for the claim as defined in WAC 296-17-870(1). If the claim is open, we will use either the case reserve amounts or the actual losses, whichever are higher.

Where not in conflict with these rules, we will use the rules for valuing claims for experience rating found in WAC 296-17-870 (1), (5) through (7), and (10) through ~~((12))~~ (13).

Employer reimbursements from the Washington stay-at-work program will not be included in the case incurred costs of claims.

2019 Novel coronavirus (COVID-19) claims: All accepted COVID-19 claim losses with a date of injury or last injurious exposure on or after January 1, 2020, will not be included in the retrospective rating adjustment calculations.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17B-540 Determining loss incurred for each claim. (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use four hundred ~~((eighteen thousand dollars (\$418,000)))~~ forty-seven thousand two hundred dollars (\$447,200) as the claim's initial incurred loss

for the claim, with ~~((three hundred eighty-three thousand seven hundred dollars (\$383,700)))~~ four hundred seventeen thousand one hundred dollars (\$417,100) for accident fund incurred loss and ~~((thirty-four thousand three hundred dollars (\$34,300)))~~ thirty thousand one hundred dollars (\$30,100) for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

AMENDATORY SECTION (Amending WSR 19-24-029, filed 11/25/19, effective 1/1/20)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES

Effective January 1, ~~((2020))~~ 2021

Size Group Number	Standard Premium Range	
	From:	To:
((1	5,270 -	6,159
2	6,160 -	6,959
3	6,960 -	7,839
4	7,840 -	8,779
5	8,780 -	9,779
6	9,780 -	10,849
7	10,850 -	12,009
8	12,010 -	13,219
9	13,220 -	14,519
10	14,520 -	15,879
11	15,880 -	17,319
12	17,320 -	18,879
13	18,880 -	20,519
14	20,520 -	22,259
15	22,260 -	24,089
16	24,090 -	26,029
17	26,030 -	28,089
18	28,090 -	30,279

Size Group Number	Standard Premium Range		Size Group Number	Standard Premium Range	
	From:	To:		From:	To:
19	30,280	32,579	61	714,600	800,599
20	32,580	35,019	62	800,600	902,699
21	35,020	37,629	63	902,700	1,026,999
22	37,630	40,379	64	1,027,000	1,179,999
23	40,380	43,309	65	1,180,000	1,370,999
24	43,310	46,419	66	1,371,000	1,617,999
25	46,420	49,719	67	1,618,000	1,942,999
26	49,720	53,239	68	1,943,000	2,397,999
27	53,240	56,989	69	2,398,000	3,066,999
28	56,990	60,959	70	3,067,000	4,170,999
29	60,960	65,209	71	4,171,000	6,251,999
30	65,210	69,749	72	6,252,000	11,439,999
31	69,750	74,599	73	11,440,000	29,269,999
32	74,600	79,799	74	29,270,000	and over))
33	79,800	85,369	<u>1</u>	<u>5,120</u>	<u>5,979</u>
34	85,370	91,249	<u>2</u>	<u>5,980</u>	<u>6,759</u>
35	91,250	97,679	<u>3</u>	<u>6,760</u>	<u>7,609</u>
36	97,680	104,699	<u>4</u>	<u>7,610</u>	<u>8,529</u>
37	104,700	112,199	<u>5</u>	<u>8,530</u>	<u>9,499</u>
38	112,200	120,299	<u>6</u>	<u>9,500</u>	<u>10,539</u>
39	120,300	128,999	<u>7</u>	<u>10,540</u>	<u>11,659</u>
40	129,000	138,299	<u>8</u>	<u>11,660</u>	<u>12,839</u>
41	138,300	148,399	<u>9</u>	<u>12,840</u>	<u>14,099</u>
42	148,400	159,299	<u>10</u>	<u>14,100</u>	<u>15,419</u>
43	159,300	170,899	<u>11</u>	<u>15,420</u>	<u>16,819</u>
44	170,900	183,599	<u>12</u>	<u>16,820</u>	<u>18,329</u>
45	183,600	197,399	<u>13</u>	<u>18,330</u>	<u>19,919</u>
46	197,400	212,299	<u>14</u>	<u>19,920</u>	<u>21,609</u>
47	212,300	228,399	<u>15</u>	<u>21,610</u>	<u>23,389</u>
48	228,400	246,399	<u>16</u>	<u>23,390</u>	<u>25,279</u>
49	246,400	265,799	<u>17</u>	<u>25,280</u>	<u>27,279</u>
50	265,800	286,999	<u>18</u>	<u>27,280</u>	<u>29,399</u>
51	287,000	310,599	<u>19</u>	<u>29,400</u>	<u>31,639</u>
52	310,600	336,799	<u>20</u>	<u>31,640</u>	<u>33,999</u>
53	336,800	366,199	<u>21</u>	<u>34,000</u>	<u>36,539</u>
54	366,200	398,799	<u>22</u>	<u>36,540</u>	<u>39,209</u>
55	398,800	435,399	<u>23</u>	<u>39,210</u>	<u>42,049</u>
56	435,400	477,099	<u>24</u>	<u>42,050</u>	<u>45,069</u>
57	477,100	524,299	<u>25</u>	<u>45,070</u>	<u>48,279</u>
58	524,300	578,599	<u>26</u>	<u>48,280</u>	<u>51,699</u>
59	578,600	641,299	<u>27</u>	<u>51,700</u>	<u>55,339</u>
60	641,300	714,599	<u>28</u>	<u>55,340</u>	<u>59,189</u>

Size Group Number	Standard Premium Range		Size Group Number	Standard Premium Range	
	From:	To:		From:	To:
<u>29</u>	<u>59,190</u>	= <u>63,319</u>	<u>71</u>	<u>4,050,000</u>	= <u>6,070,999</u>
<u>30</u>	<u>63,320</u>	= <u>67,729</u>	<u>72</u>	<u>6,071,000</u>	= <u>11,109,999</u>
<u>31</u>	<u>67,730</u>	= <u>72,439</u>	<u>73</u>	<u>11,110,000</u>	= <u>28,419,999</u>
<u>32</u>	<u>72,440</u>	= <u>77,489</u>	<u>74</u>	<u>28,420,000</u>	= <u>and over</u>
<u>33</u>	<u>77,490</u>	= <u>82,889</u>			
<u>34</u>	<u>82,890</u>	= <u>88,699</u>			
<u>35</u>	<u>88,700</u>	= <u>94,949</u>			
<u>36</u>	<u>94,950</u>	= <u>101,699</u>			
<u>37</u>	<u>101,700</u>	= <u>108,999</u>			
<u>38</u>	<u>109,000</u>	= <u>116,799</u>			
<u>39</u>	<u>116,800</u>	= <u>125,199</u>			
<u>40</u>	<u>125,200</u>	= <u>134,299</u>			
<u>41</u>	<u>134,300</u>	= <u>144,099</u>			
<u>42</u>	<u>144,100</u>	= <u>154,599</u>			
<u>43</u>	<u>154,600</u>	= <u>165,899</u>			
<u>44</u>	<u>165,900</u>	= <u>178,299</u>			
<u>45</u>	<u>178,300</u>	= <u>191,699</u>			
<u>46</u>	<u>191,700</u>	= <u>206,099</u>			
<u>47</u>	<u>206,100</u>	= <u>221,799</u>			
<u>48</u>	<u>221,800</u>	= <u>239,299</u>			
<u>49</u>	<u>239,300</u>	= <u>258,099</u>			
<u>50</u>	<u>258,100</u>	= <u>278,699</u>			
<u>51</u>	<u>278,700</u>	= <u>301,599</u>			
<u>52</u>	<u>301,600</u>	= <u>326,999</u>			
<u>53</u>	<u>327,000</u>	= <u>355,599</u>			
<u>54</u>	<u>355,600</u>	= <u>387,199</u>			
<u>55</u>	<u>387,200</u>	= <u>422,799</u>			
<u>56</u>	<u>422,800</u>	= <u>463,299</u>			
<u>57</u>	<u>463,300</u>	= <u>509,099</u>			
<u>58</u>	<u>509,100</u>	= <u>561,799</u>			
<u>59</u>	<u>561,800</u>	= <u>622,699</u>			
<u>60</u>	<u>622,700</u>	= <u>693,899</u>			
<u>61</u>	<u>693,900</u>	= <u>777,399</u>			
<u>62</u>	<u>777,400</u>	= <u>876,499</u>			
<u>63</u>	<u>876,500</u>	= <u>996,999</u>			
<u>64</u>	<u>997,000</u>	= <u>1,145,999</u>			
<u>65</u>	<u>1,146,000</u>	= <u>1,330,999</u>			
<u>66</u>	<u>1,331,000</u>	= <u>1,570,999</u>			
<u>67</u>	<u>1,571,000</u>	= <u>1,886,999</u>			
<u>68</u>	<u>1,887,000</u>	= <u>2,327,999</u>			
<u>69</u>	<u>2,328,000</u>	= <u>2,977,999</u>			
<u>70</u>	<u>2,978,000</u>	= <u>4,049,999</u>			

**WSR 20-19-131
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed September 22, 2020, 1:30 p.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 20-06-073.

Title of Rule and Other Identifying Information: Amending WAC 308-30-020 Definitions, 308-30-030 Application process for notary public commission, 308-30-040 Approval or denial of application, 308-30-050 Term of commission, 308-30-150 Completion of electronic notarial certificate, 308-30-200 Format of journals of notarial acts, 308-30-220 Fees for notarial acts, and 308-30-270 Termination or suspension of commission or endorsement; and new WAC 308-30-290 Authorized remote notarial acts, and 308-30-300 Standards for technology identity proofing and documentation.

Hearing Location(s): On October 27, 2020, at 9:00 a.m. Telephonic public hearing call in number 360-407-3815, Conference ID: 4092262.

Date of Intended Adoption: October 28, 2020.

Submit Written Comments to: Dee Sharp, Department of Licensing (DOL), Notary program, P.O. Box 9027, Olympia, WA 98507-9027, email notaries@dol.wa.gov, by October 26, 2020.

Assistance for Persons with Disabilities: Contact Dee Sharp, phone 360-664-1550, TTY 771[711], email notaries@dol.wa.gov, by October 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are necessary to update the WAC to incorporate changes required by SB 5641 to establish rules for remote notarization being performed by licensed Washington notaries. SB 5641 is effective October 1, 2020, as passed by the 2019 Washington legislature to allow licensed Washington notaries to perform remote notarizations.

Reasons Supporting Proposal: Rule modifications and adoptions are proposed to comply with the state legislature's intent to allow licensed Washington notaries to perform remote notarizations.

Statutory Authority for Adoption: RCW 42.45.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dee Sharp, 2000 4th Avenue West, Olympia, WA 98507, 360-664-1550.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost benefit analysis is not required under subsections (5)(b)(ii) and (v) of RCW 34.05.328 as these rules relate to business and professional licensing application processes and are dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

September 22, 2020
Ellis Starrett
Rules and Policy Manager

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-020 Definitions. Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed using audio-video technology that meets the requirements in WAC 308-30-130 and allows for direct interaction between the notary and the individual(s) that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-030 Application process for notary public commission. (1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary

endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

((7)) (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-040 Approval or denial of application.

(1) Upon ~~((the))~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic records notary public endorsement, and/or a remote notary endorsement, the department shall approve the application and issue the notary public commission ~~((or))~~ and/or any endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts on a tangible or electronic record before receiving a notary public commission and the appropriate endorsement from the department.

~~(4) ((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~(5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-050 Term of commission. (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement ~~((is))~~ and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-150 Completion of electronic notarial certificate. (1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the ~~((physical))~~ presence of the principal.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-200 Format of journals of notarial acts.

(1) A tangible notarial journal shall:

(a) Be a permanent, bound book with numbered pages; and

(b) Have the capacity to record for each notarial act:

(i) The information required by RCW 42.45.180(4);

(ii) A description of the notary public's method of identifying the principal; and

(iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070, or a notation in the notary journal that the notarial act was performed via remote notarization.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

(a) Be maintained only in addition to the tangible journal;

(b) Have the capacity to record the information required for a tangible notarial journal;

(c) Enable access by a password or other secure means of authentication;

(d) Be tamper-evident;

(e) Create a duplicate record of the journal as a backup; and

(f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

(4) A notary performing remote notarization must maintain a tangible notary journal as required in RCW 42.45.180 and WAC 308-30-190, 308-30-200, and 308-30-210. Notaries performing remote notarization are not required to collect and maintain the signatures of the signers when those notarizations were performed remotely. Notaries must note in their tangible notary log that a notarization was performed remotely.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-220 Fees for notarial acts. (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	Fee
Witnessing or attesting a signature	\$10.00

Notarial Act	Fee
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00
(2) A notary public need not charge for notarial acts.	
(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.	
(4) A notary public may additionally charge the actual costs of copying any instrument or record.	
(5) A notary public may charge a travel fee when traveling to perform a notarial act if:	
(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and	
(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.	
<u>(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of twenty-five dollars to perform a remote notarial act.</u>	

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-270 Termination or suspension of commission or endorsement. (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement and/or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

NEW SECTION

WAC 308-30-290 Authorized remote notarial acts. (1) A notary public who has received both an electronic

records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

- (a) Taking an acknowledgment;
- (b) Taking a verification on oath or affirmation;
- (c) Witnessing or attesting a signature;
- (d) Certifying or attesting a copy;
- (e) Certifying that an event has occurred or an act has been performed; and
- (f) Noting a protest of a negotiable instrument, if the notary public is:
 - (i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
 - (ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

NEW SECTION

WAC 308-30-300 Standards for technology identity proofing and documentation. In performing remote notarial acts, a notary must use technology which allows for a multi-factor authentication process in compliance with RCW 42.45.050 and this chapter. To perform remote notarial acts the notary must use technology which:

- (1) Verifies the identity of the signer in compliance with RCW 42.45.050;
- (2) Has two-way audio-visual capabilities between the notary and signer(s);
- (3) Is capable of recording the notarization; and
- (4) Has reasonable security measures which ensure notarial acts are secure once recorded.

WSR 20-19-132
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed September 22, 2020, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-060.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On October 27, 2020, at 1 p.m. Joining electronically: Zoom meeting at <https://zoom.us/j/97481806932>, Meeting ID: 974 8180 6932, Passcode: 3B^K7QVm. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 974 8180 6932, Passcode: 43372117; or on October 29, 2020, at 1 p.m. Joining electronically: Zoom meeting at <https://zoom.us/j/97217538063>, Meeting ID: 972 1753 8063, Passcode: Oct2920!. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 972 1753 8063,

Passcode: 22230074. The hearings start at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 30, 2020.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4988, by October 30, 2020, by 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by October 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to allow contractors of the United States Department of Energy (DOE) working at the Hanford site to have their contractors and subcontractors covered under the state fund. We propose amending one classification, establishing nine new classifications and rates, and establishing reporting requirements. Currently, these contractors are covered under a special insuring agreement/memorandum of understanding (MOU) as authorized under RCW 51.04.130. DOE will identify those contractors who will be covered under the special insuring agreement.

Proposal: If this proposal is adopted, employers working under a contract with DOE who are not identified by DOE as part of the special insuring agreement/MOU would:

- Report and pay for their DOE contract work to the department of labor and industries (L&I) using the appropriate proposed classifications effective January 1, 2021.
- Not have their on-site premiums or losses included in their experience calculation.
- Not have their on-site premiums or losses participate in the retrospective rating program.
- Be subject to intermittent premium adjustments for up to ten years as L&I will periodically review premium reporting and loss experience to ensure the rates for the DOE classifications are adequate.

Intermittent adjustments will ensure L&I collects the appropriate level of premium from contractors. Adjustments may result in assessment of additional premiums or refunds of premium overpayments.

This proposal is:

- Amending Classification 7002 for administrative and professional employees of contractors;
- Creating Classification 7004 for fire department contractors;
- Creating Classification 7005 for police and security contractors;
- Creating Classification 7006 through 7011 for a variety of contractors based on groups of common composite rates;
- Creating Classification 7015 for contractors of the Hanford vitrification plant;
- Creating new rates for all proposed classifications; and
- Creating a new reporting rule.

Amending WAC 296-17A-7002 Classification 7002.

New WAC 296-17A-7004 Classification 7004, 296-17A-7005 Classification 7005, 296-17A-7006 Classification 7006, 296-17A-7007 Classification 7007, 296-17A-7008 Classification 7008, 296-17A-7009 Classification 7009, 296-17A-7010 Classification 7010, 296-17A-7011 Classification 7011, 296-17A-7015 Classification 7015, 296-17-89510 Department of energy rates, and 296-17-950 Department of energy reporting.

Reasons Supporting Proposal: This proposal will ensure DOE contractors and subcontractors will be covered by the state fund for workers' compensation insurance while working at the DOE Hanford site. This new classification and rating system will ensure that appropriate levels of premium are collected to offset losses for this work.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Keith Bingham, Tumwater, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

September 22, 2020

Joel Sacks
Director

NEW SECTION

WAC 296-17-89510 Department of Energy rates. These rates apply to businesses contracting with the Department of Energy.

Effective January 1, 2021

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
7002	0.2303	0.0034	0.1340	0.1372	0.5049
7004	5.5371	0.0858	2.1073	0.1372	7.8674
7005	4.2295	0.0657	1.5088	0.1372	5.9412
7006	0.2322	0.0035	0.1071	0.1372	0.4800
7007	1.5358	0.0236	0.7287	0.1372	2.4253
7008	3.3528	0.0519	1.2354	0.1372	4.7773
7009	3.7630	0.0580	1.5417	0.1372	5.4999
7010	4.8838	0.0752	2.1108	0.1372	7.2070
7011	7.5947	0.1172	3.0774	0.1372	10.9265
7015	7.5947	0.1172	3.0774	0.1372	10.9265

Note: The premiums assessed using these rates are not subject to experience rating (WAC 296-17-855) or retrospective rating (chapter 296-17B WAC).

maintain such records is required to report and pay premiums on the work in the risk class within the scope of this rule with the highest composite premium rate.

NEW SECTION

WAC 296-17-950 Department of Energy reporting.

This rule applies to all work performed within the boundaries of the Hanford Site pursuant to a contract with the U.S. Department of Energy, whether directly or indirectly, that is subject to the provisions of the Industrial Insurance Act under Title 51 RCW.

(5) **Division of hours.** Employers who maintain records sufficient to do so may report a worker's hours in more than one applicable Hanford risk classes. Employers who have workers who perform work both within and outside the scope of this rule may report a worker's hours in multiple risk classifications, provided the non-Hanford risk classifications do not prohibit reporting in multiple classifications.

(1) **Reporting requirement.** Any employer with workers performing work within the scope of this rule shall report that work, and pay premiums on that work, according to this rule.

(6) **Experience rating and retrospective rating.** Premiums for work within the scope of this rule will not be experience rated, and neither the premiums, nor any losses associated with work within the scope of this rule will be used in an employer's experience calculations. Premiums for work within the scope of this rule are not subject to retrospective rating, and neither the premiums nor losses within the scope of this rule will be used in retrospective rating calculations.

(2) **Premium basis.** The basis for calculation of premiums for all work within the scope of this rule shall be actual worker hours.

(3) **Risk classifications.** All work performed within the scope of this rule shall be reported in the following Hanford risk classifications:

(7) **Retroactive adjustment of premium rates.** Notwithstanding any provisions of this chapter, the premium rates adopted for work within the scope of this rule are subject to retroactive adjustment by the Department for up to ten years. Periodically, the Department will review the premium reporting and loss experience, and may retroactively adjust premium rates if necessary to ensure that the rates for the risk classes within the scope of this rule are neither inadequate nor excessive. If the Department retroactively increases rates, the Department will recalculate each affected employer's premiums, provide each affected employer with notice of the additional premiums due, and give the employer sixty days to pay the additional premiums without penalty or interest. If the Department retroactively decreases rates, the Department will recalculate each affected employer's premiums, and refund the difference between the premiums paid and the adjusted premiums due.

(a) WAC 296-17A-7002 Classification 7002 Department of Energy Contractors - Administrative and professional employees;

(b) WAC 296-17A-7004 Classification 7004 Fire department;

(c) WAC 296-17A-7005 Classification 7005 Police and security;

(d) WAC 296-17A-7006 through 296-17A-7011 Department of Energy classifications based on groups of common composite rates; and

(e) WAC 296-17A-7015 Classification 7015 Department of Energy contractors - Vitrification plant.

(4) **Recordkeeping.** Any employer within the scope of this rule must create and maintain records of all work performed within the scope of this rule that are sufficient for the Department to determine the proper risk classification and premiums for such work. An employer that fails to create and

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7002 Classification 7002.

~~((7002-00 Department of Energy contract~~

~~Applies to establishments that have contracted with the department of energy at DOE's nuclear facilities within the state of Washington to operate, construct or service the nuclear site. At present, the only site covered by this contract is at Richland. These contractors can be identified by the assignment of account number 000,100-xx with each contractor given a separate subaccount. The coverage provided by this classification is usually for the possibility of workers being exposed to nuclear radiation although the coverage applies to any type of on-the-job injury. Benefits for injured workers covered under this contract are paid from a special fund which DOE pays into to cover all industrial insurance and medical aid payments made to or in behalf of the injured workers and/or their beneficiaries. The premium paid by the contractors to labor and industries is limited to the supplemental pension premium assessment.~~

~~**Special note:** This classification is used to administer the DOE contract and collect supplemental pension fund premiums.))~~

7002 Department of Energy contractors - Administrative and professional employees

Applies to contractors of the Department of Energy usually working in an office or professional environment performing clerical, administrative, and professional services such as, but not limited to:

- Accounting;
- Auditing;
- Benefits coordination;
- Classroom training;
- Computer systems analysis;
- Contract administration;
- Drafting;
- Human resources;
- Legal;
- Project management;
- Risk management; and
- Software engineering.

Excludes:

- Firefighters who are to be reported separately in classification 7004;
- Law enforcement officers who are to be reported separately in classification 7005; and
- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

NEW SECTION

WAC 296-17A-7004 Classification 7004.

7004 Fire department

Applies to employees of contractors for the Department of Energy, who provide firefighting and fire prevention services.

Duties of firefighters include, but are not limited to:

- Administering first aid and artificial respiration to injured persons and those overcome by fire and smoke;
- Controlling and extinguishing fires;
- Inspecting buildings for fire hazards and compliance with fire prevention ordinances;
- Issuing citations to building owners listing the fire regulation violations to be corrected;
- Maintaining firefighting equipment;
- Protecting lives and property; and
- Responding to fire alarms and other emergencies.

This classification includes paramedics employed by the fire department.

NEW SECTION

WAC 296-17A-7005 Classification 7005.

7005 Police and security

Applies to employees of contractors for the Department of Energy, who provide law enforcement and security services.

Duties of law enforcement officers include, but are not limited to:

- Arresting violators;
- Conducting criminal investigations;
- Directing traffic;
- Giving first aid;
- Guarding persons detained at the police station;
- Investigating disturbances of the peace;
- Patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback;
- Preventing crimes; and
- Responding to burglar or fire alarms.

Special note: State fund workers' compensation is not provided to volunteer firefighters covered by chapter 41.24 RCW and emergency service workers covered by chapter 38.52 RCW.

NEW SECTION

WAC 296-17A-7006 Classification 7006. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7006-00 Classification 4900 Construction project or site superintendent/manager;
- 7006-01 Classification 4911 Construction estimator;
- 7006-02 Classification 4901 Consulting engineer and geologist;
- 7006-03 Classification 4903 Safety, building inspector;
- 7006-04 Classification 6109 Physicians and medical clinics;
- 7006-05 Classification 6406 Storekeeper;
- 7006-06 Classification 6909 Laboratory; and
- 7006-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7007 Classification 7007. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7007-00 Classification 0521 Painting: Buildings-interior work;
- 7007-01 Classification 0308 Lawn care maintenance;
- 7007-02 Classification 0606 Vending machine installation, service and repair;
- 7007-03 Classification 0601 Electrical wiring: Buildings and structures;
- 7007-04 Classification 5206 Construction/logging/trucking - Permanent yard;
- 7007-05 Classification 0608 Telephone and electrical alarm system installation;
- 7007-06 Classification 6602 Janitorial, commercial cleaning;
- 7007-07 Classification 1801 Lead smelting, rolling mills, metal recovery;
- 7007-08 Classification 3411 Auto repair shop;
- 7007-09 Classification 1007 Environmental surveyors, geophysical exploration, hygienist;
- 7007-10 Classification 4910 Property management;
- 7007-11 Classification 3402 Machine shops and machinery mfg;
- 7007-12 Classification 3404 Metal good mfg;
- 7007-13 Classification 3701 Chemical mixing and manufacturing; and
- 7007-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7008 Classification 7008. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7008-00 Classification 0219 Guardrails, street signs and traffic lights installation;
- 7008-01 Classification 1704 Quarries;
- 7008-02 Classification 0603 Machinery installation, service and repair;
- 7008-03 Classification 0306 Plumbing;
- 7008-04 Classification 0607 Appliance installation svc repair, store svcs contractor, and locksmiths;
- 7008-05 Classification 0112 Sand and gravel production including dealers;
- 7008-06 Classification 0602 Elevator installation, svcs and repair;
- 7008-07 Classification 1802 Aluminum smelting; and
- 7008-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7009 Classification 7009. Applies to work reportable under the Hanford special reporting rule, that

but-for this special reporting rule, would be reportable in the following risk classifications:

- 7009-00 Classification 0105 Fence erection and repair N.O.C.;
- 7009-01 Classification 0101 Excavation, road construction, land clearing N.O.C.;
- 7009-02 Classification 0107 Underground utility line const and pipelaying N.O.C.;
- 7009-03 Classification 0104 Dredging N.O.C.;
- 7009-04 Classification 0108 Sewer and septic system cons, undgrd tank install, repair, remove;
- 7009-05 Classification 0509 Overhead power and transmission line construction;
- 7009-06 Classification 0502 Floor and counter covering installation;
- 7009-07 Classification 1703 Open cut mines;
- 7009-08 Classification 3506 Mobile crane, hoisting services, and concrete pumping;
- 7009-09 Classification 0301 Landscape construction and renovation;
- 7009-10 Classification 0210 Asphalt paving - Highway, streets and roads;
- 7009-11 Classification 0307 HVAC systems - Installation, service and repair;
- 7009-12 Classification 0513 Inter finish carpentry;
- 7009-13 Classification 0212 Asphalt paving or surfacing N.O.C.; and
- 7009-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7010 Classification 7010. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7010-00 Classification 0517 Factory-built home set-up by contractor/manufacturer;
- 7010-01 Classification 0403 Sign erection, repair, removal;
- 7010-02 Classification 0214 Concrete work-highways, streets, roads and sidewalks;
- 7010-03 Classification 0516 Building repair, remodeling and carpentry N.O.C.;
- 7010-04 Classification 1702 Underground mines;
- 7010-05 Classification 0511 Glass installation: Buildings;
- 7010-06 Classification 0103 Drilling and geophysical exploration N.O.C.;
- 7010-07 Classification 0519 Sheet metal siding, gutter and downspout installation;
- 7010-08 Classification 0508 Tower, tank, windmill and crane construction;
- 7010-11 Classification 0512 Insulation installation and asbestos abatement work;
- 7010-12 Classification 0514 Garage door installation, service, and repair;
- 7010-13 Classification 0518 Nonwood frame building construction;

7010-14 Classification 0217 Concrete work - Foundations and flatwork;

7010-15 Classification 0541 Wallboard taping - Discounted rate;

7010-16 Classification 1101 Delivery services;

7010-17 Classification 4305 Solid waste, landfill, hazardous waste and toxic material processing or handling N.O.C.; and

7010-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7011 Classification 7011. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

7011-00 Classification 0507 Roof work - Construction and repair;

7011-01 Classification 0540 Wallboard installation - Discounted rate;

7011-02 Classification 0106 Tree care and pruning services N.O.C.;

7011-03 Classification 0510 Wood frame building construction and alterations;

7011-04 Classification 0701 Dam construction;

7011-05 Classification 0201 Bridge, bulkhead and tunnel construction;

7011-06 Classification 0302 Masonry construction;

7011-07 Classification 0504 Painting: Building and structures - Exterior work;

7011-08 Classification 0202 Pile construction, wharf, pier and dock construction, diving operations;

7011-09 Classification 0303 Plastering, stuccoing and lathing: Buildings;

7011-10 Classification 1102 Trucking; and

7011-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7015 Classification 7015.

7015 Department of Energy contractors - Vitrification plant

Applies to contractors of the Department of Energy operating and maintaining the vitrification plant, also known as "Vit Plant," on the Hanford nuclear reservation. The vitrification process converts liquid radioactive and chemical waste into a solid, stable glass, eliminating environmental risks.

The vitrification process is performed by:

- Mixing waste with silica and other glass-forming materials at the low-activity waste facility;
- Sending the mixture to high-temperature melters where they are heated to 2,100 degrees Fahrenheit to form molten glass;
- Pouring molten glass into containment vessels where it cools to become solid glass; and

- Storing the stabilized waste safely at a federal repository.

Operations and work activities are performed in the following areas of the plant:

- Analytical laboratory;
- Pretreatment facility;
- High-level waste vitrification facility;
- Steam plant;
- Glass former facility;
- Chiller/compressor plant; and
- Low-activity waste vitrification facility.

Excludes:

- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

WSR 20-19-135

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2019-11—Filed September 22, 2020, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-089.

Title of Rule and Other Identifying Information: Prescription drug utilization management (ESHB 1879).

Hearing Location(s): On October 28, 2020, at 3:30 p.m. Zoom meeting: Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website here <https://www.insurance.wa.gov/prescription-drug-utilization-management-r-2019-11>.

Date of Intended Adoption: November 1, 2020.

Submit Written Comments to: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 28, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by October 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules regarding prescription drug utilization management to ensure implementation as provided for in ESHB 1879 (chapter 171, Laws of 2019), which has been codified in RCW 48.43.400, 48.43.410, 48.43.420, and 48.43.073. In addition to adding new sections, the commissioner is considering amending existing WAC, including WAC 284-43-0160, 284-43-2020, 284-43-5080, 284-43-5100, and 284-43-5170.

Reasons Supporting Proposal: The legislature passed ESHB 1879 during the 2019 session. The bill requires health carriers and prescription drug utilization management companies that restrict prescription drug coverage through use of utilization management to provide both the patient and the prescribing practitioner access to a clear, readily accessible,

and timely exception process. The bill also requires utilization management protocols to be evidence-based and creates requirements and timelines for step therapy exception requests. The OIC needs to develop rules to amend existing WAC and add new sections to align with ESHB 1879 (chapter 171, Laws of 2019).

Statutory Authority for Adoption: RCW 48.02.060, 48.43.400, 48.43.410, and 48.43.420.

Statute Being Implemented: RCW 48.43.400, 48.43.410, and 48.43.420.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7117; and Enforcement: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7214.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tabba Alum, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no

costs associated with the proposed rule to small businesses. The OIC has applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3).

Below are calculations for minor cost thresholds across stakeholder[s] that classify as a small business based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the small business stakeholders.

Further, OIC has determined that implementation of the proposed rule will not result in any administrative, intrinsic or actual costs to pharmacies and small provider offices as they at present have preexisting process[es] to accommodate the time limits in the proposed legislation.

In contrast, OIC had determined on the basis of historical studies that the proposed rule will offer increased benefit to the small business stakeholders by streamlining the process of an enrollee's access to nonformulary or alternative medicines for conditions that are not responsive to treatment (Cox ER, Henderson R, Motheral BR. Health plan member experience with point-of-service prescription step therapy. J Manag Care Pharm. 2004;10(4):291-298. Hsu J, Price M, Huang J, et al. Unintended consequences of caps on Medicare drug benefits. N Engl J Med. 2006;354(22):2349-2359).

For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.-020(2).

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Average number of employees/business	Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPay)
446110	\$100.00	Pharmacies and drug stores	Health and personal care stores	42	\$468.49
621111	\$100.00	Offices of physicians, except mental health	Healthcare and social assistance	29	\$968.28
621112	\$100.00	Offices of mental health physicians	Healthcare and social assistance	5	\$482.23
621210	\$100.00	Offices of dentists	Healthcare and social assistance	9	\$454.52
621320	\$100.00	Offices of optometrists	Healthcare and social assistance	7	\$375.00
621330	\$100.00	Offices of mental health practitioners	Healthcare and social assistance	9	\$379.98
621340	\$100.00	Offices of specialty therapists	Healthcare and social assistance	15	\$472.87
621399	\$100.00	Offices of miscellaneous health practitioners	Healthcare and social assistance	5	329.79
621410	\$100.00	Family planning centers	Healthcare and social assistance	37	\$549.48
621420	\$100.00	Outpatient mental health centers	Healthcare and social assistance	47	\$523.24

Source: Washington State Auditor Minor Cost Threshold Calculator July 2019.xlsx

A copy of the detailed cost calculations may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109.

September 22, 2020
Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-2020 Drug utilization review—Generally. (1) These definitions apply to this section only:

(a) "Nonurgent review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services, or a renewal of a previously approved request, and is not an urgent care request.

(b) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function or, in the opinion of a provider with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each issuer must maintain a documented drug utilization review program. The program must include a method for reviewing and updating criteria. Issuers must make drug review criteria available upon request to a participating provider. Beginning January 1, 2021, an issuer must post its clinical review criteria for prescription drugs and the drug utilization management exception process on its website. An issuer must also require any entity performing prescription drug benefit administration on the issuer's behalf to post the drug utilization management exception process and clinical review criteria used for the issuer's enrollees on the entity's website. The review criteria must be accessible to both providers and enrollees and presented in plain language that is understandable to both providers and enrollees. The clinical review criteria must include all rules and criteria related to the prescription drug utilization management exception process including the specific information and documentation that must be submitted by a health care provider or enrollee to be considered a complete exception request.

(3) The drug utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(4) The drug utilization review program must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(5) Each issuer must have written procedures to assure that reviews are conducted in a timely manner.

(a) If the review request from a provider or enrollee is not accompanied by all necessary information, the issuer must tell the provider or enrollee what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer determination and notification must be no less favorable than United States Department of Labor standards, and are as follows:

(i) For urgent care review requests:

(A) Must approve the request within forty-eight hours if the information provided is sufficient to approve the claim and include the authorization number, if a prior authorization number is required, in its approval;

(B) Must deny the request within forty-eight hours if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within twenty-four hours, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination:

(I) The issuer must give the provider forty-eight hours to submit the requested information;

(II) The issuer must then approve or deny the request within forty-eight hours of the receipt of the requested additional information and include the authorization number in its approval;

(ii) For nonurgent care review requests:

(A) Must approve the request within five calendar days if the information is sufficient to approve the claim and include the authorization number in its approval;

(B) Must deny the request within five calendar days if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within five calendar days, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination:

(I) The issuer must give the provider five calendar days to submit the requested additional information;

(II) The issuer must then approve or deny the request within four calendar days of the receipt of the additional information and include the authorization number in its approval.

(b) Notification of the prior authorization determination must be provided as follows:

(i) Information about whether a request was approved must be made available to the provider;

(ii) Whenever there is an adverse determination resulting in a denial the issuer must notify the requesting provider by one or more of the following methods; phone, fax and/or secure electronic notification, and the covered person in writing or via secure electronic notification. Status information will be communicated to the billing pharmacy, via electronic transaction, upon the issuer's receipt of a claim after the request has been denied. The issuer must transmit these notifications within the time frames specified in (a)(i) and (ii) of this subsection in compliance with United States Department of Labor standards.

(6) When a provider or enrollee requests an exception to an issuer's drug utilization program, the urgent and nonurgent time frames established in RCW 48.43.420, WAC 284-43-2021 and 284-43-2022 shall apply.

(7) No issuer may penalize or threaten a pharmacist or pharmacy with a reduction in future payment or termination of participating provider or participating facility status because the pharmacist or pharmacy disputes the issuer's determination with respect to coverage or payment for pharmacy service.

NEW SECTION

WAC 284-43-2021 Prescription drug utilization management exception and substitution process. (1) For purposes of this section and WAC 284-43-2022:

(a) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of prescription drug utilization management.

(b) "Medically appropriate" means prescription drugs that under the applicable standard of care are appropriate:

(i) To improve or preserve an enrollee's health, life, or function;

(ii) To slow the deterioration of an enrollee's health, life, or function; or

(iii) For the early screening, prevention, evaluation, diagnosis, or treatment of a disease, condition, illness, or injury.

(2) Beginning January 1, 2021, a carrier must establish an exception request program so that enrollees and providers may request substitution of a preferred drug, therapy or medication, and exceptions to prescription drug benefit limitations and procedures under a carrier's drug utilization management program. The process must include both nonurgent and urgent exception request procedures.

(3) A carrier must treat an exception request as urgent when an enrollee is experiencing a health condition that may seriously jeopardize the enrollee's life, health or ability to regain maximum function, or when the enrollee is undergoing a current course of treatment using a nonformulary drug.

(4) A carrier's exception request standards, procedures and the process description must be available to the commissioner for review upon request. A carrier must require any entity the carrier uses to administer its prescription drug benefit or to make coverage decisions for prescription drug, therapy, or medication coverage, to comply with the carrier's exception process requirements. Neither the exception request process criteria nor the type or volume of documentation required to support an exception request may be unreasonably burdensome to the enrollee or their provider.

(5) The exception request procedures must:

(a) Clearly explain the process a provider and enrollee may use to request approval from the carrier, or any entity providing benefit administration, to substitute one drug, therapy or medication for another drug, therapy or medication on both an urgent and nonurgent basis.

(b) Explain how the exception process provides an enrollee with access to drugs, therapies, or medication that are both on and off the carrier's formulary.

(c) Permit an enrollee and their provider to use the exception request process when a formulary's tiering structure changes during the year and an enrollee is using a drug affected by the change.

(d) Permit a request for an exception to utilization management restrictions applied by the carrier or any entity providing benefit administration, such as a requirement for step therapy, dosage limitations, or therapeutic substitution.

(e) Permit substitution coverage for nonspecialty and specialty drugs, biologics, self-administered medication, and off-label prescriptions of medications, which means a prescription of a medication, drug, or therapy for an indication that deviates significantly from the approved U.S. Food and

Drug Administration labeling. An indication is defined as a diagnosis, illness, injury, syndrome, condition or other clinical parameter for which a drug may be given. A carrier is not required to permit substitution coverage for vaccines.

(6) A carrier must not establish a special formulary tier or copayment or other cost-sharing requirement that is only applicable to prescription drugs approved for coverage under an exception request. When an enrollee or their provider requests a formulary or tiering exception to obtain a nonpreferred drug that is in a higher cost-sharing tier, a carrier may apply the cost-share for the substituted drug based on the substituted drug's placement on the formulary. For a drug that is not on the formulary, the carrier must apply the enrollee's share of cost to their out-of-pocket maximum calculations. A carrier's prescription drug benefit must include a description of the enrollee's cost-share obligation for off-formulary coverage of substituted drugs, therapies, or medications accessed through the exception process.

(7) A carrier must not require the enrollee to submit a new exception request for a refill if the enrollee's prescribing physician or other prescriber continues to prescribe the drug and the drug continues to be approved by the U.S. Food and Drug Administration for treating the enrollee's disease or medical condition, or if the drug was prescribed as part of the enrollee's participation in a clinical trial.

(a) If the substituted drug is for an off-label drug use, a carrier may require the enrollee to submit a new exception request when a prescription fill and renewal cycle ends.

(b) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an interchangeable biological product prior to providing coverage for the equivalent branded prescription drug.

(c) A carrier must consider exception requests for a U.S. Food and Drug Administration approved drug used for purposes other than what is indicated on the official label if the use is medically acceptable. A carrier must take into consideration major drug compendia, authoritative medical literature, and accepted standards of practice when making its decision.

(8) Subject to the terms and conditions of the policy that otherwise limit or exclude coverage, the carrier must grant the exception request if it can determine at least one of the following from the information submitted by a provider or enrollee in support of the exception request:

(a) The enrollee does not tolerate the covered generic or formulary drug;

(b) The enrollee's provider has determined that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the exception request;

(c) The enrollee's provider has determined clinically efficacious treatment requires a dosage that differs from a carrier's formulary dosage limitation for the covered drug. A carrier may require the provider to submit specific clinical documentation as part of the exception request and must review that documentation prior to making a decision;

(d) The enrollee has tried the required prescription drug or another prescription drug in the same pharmacologic class or a drug with the same mechanism of action and, based on

the enrollee's documented history, establishes to their provider's satisfaction that they discontinued use of that drug because it was not therapeutically efficacious, effective, had a diminished effect or caused the enrollee an adverse event. A carrier may not deny an exception request solely on the basis that the enrollee's prior use of the required or preferred drug was not within a specific time frame;

(e) The provider has determined that changing from a currently prescribed drug to a drug required by the carrier's formulary management protocols may cause clinically predictable adverse reactions, or physical or mental harm to the enrollee. A carrier's exception program must include uniform standards for the type of clinical documentation required to establish that an adverse reaction, or physical or mental harm is clinically predictable; or

(f) The drug required by the carrier's formulary management protocols is not in the best interest of the enrollee. To grant an exception request under this standard, a carrier must require submission of documentation of medical appropriateness, including an explanation of why the provider expects the enrollee's use of the required drug to either create a barrier to the enrollee's adherence to or compliance with their plan of care, to negatively impact a comorbid condition of the enrollee, to cause a clinically predictable negative drug interaction or to decrease the enrollee's ability to achieve or maintain reasonable functional ability in performing daily activities.

(9) A carrier must include specific direction in its process explaining how an enrollee may request coverage for an emergency fill of a substitute drug, therapy or medication. A carrier must cover an emergency fill if the treating health care provider determines that the emergency fill is necessary to keep the enrollee stable while the exception request is being processed.

(a) A carrier is not required to grant an exception request for a substitute drug on the basis that an emergency fill was requested.

(b) The emergency fill exception request process in subchapter D of this chapter provides an exception to the carrier's emergency fill policy as required by WAC 284-170-470(8).

NEW SECTION

WAC 284-43-2022 Time frame for exception and substitution request determinations. (1) A carrier must make an exception request determination in a timely manner as defined in this section. A carrier may not deny the exception request if the enrollee or provider does not receive a response to an exception request within the time frames in this section.

(2) A carrier must maintain a sufficient record of each exception request to establish its compliance with the required exception process and time frames under chapter 284-43 WAC and RCW 48.43.420. Upon the commissioner's request, a carrier must make all records and documentation available and produce all requested documentation from any entity providing benefit administration or exception request decisions on its behalf within the time frame set by the commissioner.

(3) If a provider fails to submit sufficient information for the carrier to approve or deny an exception request, a carrier must notify the provider of the specific information needed within three business days of receiving a nonurgent exception request and one business day of receiving an urgent exception request. A carrier must notify the provider that the documentation is insufficient and must explain what information is missing. A carrier may establish a specific reasonable time frame for submission of the additional information. This time frame must be communicated to the provider or enrollee with a carrier's request for additional information. If the additional information is not received within that time frame, a carrier may deny the request.

(4) When a carrier receives sufficient information to make a decision regarding a nonurgent exception request, a carrier must make its determination and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) no later than three business days following receipt of the request.

(5) When a carrier receives sufficient information to make a decision regarding an urgent exception request, a carrier must make its determination and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) no later than one business day following receipt of the request.

(6) Use of a carrier's exception process is not a grievance or appeal pursuant to RCW 48.43.530 and 48.43.535. Denial of an exception request is an adverse benefit determination, and an enrollee, their representative provider or facility, or representative may request review of that decision using a carrier's appeal or adverse benefit determination review process.

(7) A carrier's denial of an exception request is subject to the requirements of RCW 48.43.535 and chapter 284-43A WAC, which grants enrollees access to independent external review of carrier decisions to deny, modify, reduce or terminate coverage of or payment for a health care service or if the carrier exceeds the timelines for making an exception request decision and denies coverage. While the external review is conducted, the carrier must cover the drug if the exception request was urgent or was for an emergency fill. If such an exigency ceases, any drug previously covered under such exigency may only be reauthorized through the standard exception request process. If the independent external review reverses the carrier's denial of either an urgent or nonurgent exception request, the carrier must retrospectively cover the nonformulary drug and continue coverage for the duration of the prescription.

(8) A carrier may not penalize or threaten a provider with a reduction in future payment or termination of a participating provider agreement because the provider disputes a carrier's determination with respect to coverage or payment for a substitute drug.

AMENDATORY SECTION (Amending WSR 17-03-087, filed 1/12/17, effective 2/12/17)

WAC 284-43-5080 Prescription drug benefit design.

(1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred

drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier ((must establish a process that a provider and enrollee (or their designee) may use to request a substitution for a prescribed therapy, drug or medication that is not on the formulary.

(a) ~~The process must not unreasonably restrict an enrollee's access to nonformulary or alternate medications for refractory conditions. Used in this context, "refractory" means "not responsive to treatment."~~

(b) For an individual or small group plan, a carrier must make its determination on a standard exception and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) of its coverage determination no later than seventy-two hours following receipt of the request. A carrier that grants a standard exception request must provide coverage of the nonformulary drug for the duration of the prescription, including refills.

(c) For an individual or small group plan, a carrier must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing provider (or other prescriber) to request an expedited review based on exigent circumstances. For purposes of this section, "exigent circumstances" exist when an enrollee is experiencing a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a nonformulary drug.

(i) A carrier must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the enrollee's designees and the prescribing provider (or other prescriber) of its coverage determination no later than twenty-four hours following receipt of the request.

(ii) A carrier that grants an exception based on exigent circumstances must provide coverage of the nonformulary drug for the duration of the exigency.

(d) Subject to the terms and conditions of the policy that otherwise limit or exclude coverage, the carrier must permit substitution of a covered generic drug or formulary drug if:

(i) An enrollee does not tolerate the covered generic or formulary drug; or

(ii) An enrollee's provider determines that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the substitution request; or

(iii) The provider determines that a dosage is required for clinically efficacious treatment that differs from a carrier's

formulary dosage limitation for the covered drug. A carrier may require the provider to submit specific clinical documentation as part of the substitution request and must review that documentation prior to making a decision.

(4) ~~A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over the counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.~~

(a) ~~Neither the substitution process criteria nor the type or volume of documentation required to support a substitution request may be unreasonably burdensome to the enrollee or their provider.~~

(b) The substitution process must be administered consistently, and include a documented consultation with the prescribing provider prior to denial of a substitution request.

(5) Use of a carrier's substitution process is not a grievance or appeal pursuant to RCW 48.43.530 and 48.43.535. Denial of a substitution request is an adverse benefit determination, and an enrollee, their representative provider or facility, or representative may request review of that decision using the carrier's appeal or adverse benefit determination review process.

(6) In an individual or small group plan, if the carrier denies a request for a standard exception or for an expedited exception, the carrier must have a process for the enrollee, the enrollee's designee, or the enrollee's prescribing provider (or other prescriber) to request that the original exception request and subsequent denial of such request be reviewed by an independent review organization.

(a) A carrier must determine whether or not to grant an external exception request review and notify the enrollee or the enrollee's designee and the prescribing provider (or other prescriber, as appropriate) of its decision no later than seventy-two hours following its receipt of the request, if the original request was a standard exception request, and no later than twenty-four hours following its receipt of the request, if the original request was an expedited exception request.

(b) If a standard exception request is granted after an external review, the health plan must provide coverage of the nonformulary drug for the duration of the prescription. If an expedited exception request is granted after an external review, the health plan must provide coverage of the nonformulary drug for the duration of the exigency. If such an exigency ceases, any drug previously covered under such exigency may only be reauthorized through the standard exception request process)) may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(4) A carrier may require an enrollee to try an AB-rated generic equivalent or a biological product that is an inter-

changeable biological product prior to providing coverage for the equivalent branded prescription drug.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-5100 Formulary changes. An issuer is not required to use a formulary as part of its prescription drug benefit design. If a formulary is used, an issuer must, at a minimum, comply with these requirements when a formulary change occurs.

(1) In addition to the requirements set forth in WAC 284-30-450, an issuer must not exclude or remove a medication from its formulary if the medication is the sole prescription medication option available to treat a disease or condition for which the health benefit plan, policy or agreement otherwise provides coverage, unless the medication or drug is removed because the drug or medication becomes available over-the-counter, is proven to be medically ineffective, or for documented medical risk to patient health.

(2) If a drug is removed from an issuer's formulary for a reason other than withdrawal of the drug from the market, availability of the drug over-the-counter, or the issue of black box warnings by the Federal Drug Administration, an issuer must continue to cover a drug that is removed from the issuer's formulary for the time period required for an enrollee who is taking the medication at the time of the formulary change to use an issuer's ~~((substitution))~~ exception request process to request continuation of coverage for the removed medication, and receive a decision through that process, unless patient safety requires swifter replacement.

(3) Formularies and related preauthorization information must be posted on an issuer or issuer's contracted pharmacy benefit manager website and must be current. Unless the removal is done on an immediate or emergency basis or because a generic equivalent becomes available without prior notice, formulary changes must be posted ~~((thirty))~~ sixty days before the effective date of the change. In the case of an emergency removal, the change must be posted as soon as practicable, without unreasonable delay.

(4) An issuer must make current formulary information electronically available for loading into e-prescribing applications/electronic health records utilizing the National Council for Prescription Drug Programs (NCPDP) formulary and benefit standard transaction. Issuers must include all required data elements as well as the following information, to the extent supported by the transaction:

- (a) Tier level;
- (b) Contract exclusions;
- (c) Quantity limits;
- (d) Preauthorization required;
- (e) Preferred/step therapy.

(5) The issuer's exception request process for any aspect of its prescription drug utilization management program must permit requests for off-formulary substitutions, as well as substitution of one drug on the formulary for another.

AMENDATORY SECTION (Amending WSR 17-01-166, filed 12/21/16, effective 1/21/17)

WAC 284-43-5170 Prescription drug benefit disclosures. (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit in addition to those required elsewhere in Titles 48 RCW and 284 WAC. The commissioner may disapprove any contract issued on or after January 1, 2018, if the requirements of this subsection are not met.

(a) A clear statement explaining that the health benefit plan uses the following in its coverage of drugs (as applicable):

- (i) Exclusion of certain brand name or other medications from its formulary;
- (ii) Therapeutic drug substitution;
- (iii) Incentives for use of generic drugs (such as step-therapy protocols);
- (iv) Prior authorization requirements;
- (v) Mid-plan year formulary changes; or
- (vi) Other limits of its prescription drug benefit.

(b) For health plans delivered, issued, or renewed on or before January 1, 2021, a clear explanation of the substitution process required under WAC 284-43-5080 that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(c) For health plans delivered, issued, or renewed on or after January 1, 2021, a clear explanation of the exception and substitution processes required under WAC 284-43-2021, 284-43-2022, and 284-43-5080.

(d) A clear statement explaining that consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470. The disclosure must include the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

~~((d))~~ (e) The process for developing coverage standards and formularies, including the principal criteria by which drugs are selected for inclusion, exclusion, restriction or limitation.

~~((e))~~ (f) The process of changing formularies and coverage standards, including changes in the use of substitute drugs. If the plan has provisions for "grandfathering" certain ongoing prescriptions or other coverage exceptions, these practices must be disclosed.

~~((f))~~ (g) The disclosure must state whether drugs may move between tiers during a plan year and whether this may affect cost-sharing.

~~((g))~~ (h) Any medication management, disease management, or other pharmacy-related services reimbursed by the plan in addition to those required under state and federal law in connection with dispensing drugs, such as disease management services for migraine, diabetes, smoking cessation, asthma, or lipid management.

~~((h))~~ (i) The general categories of drugs excluded from coverage must be disclosed. Such categories may include items such as appetite suppressants, dental prescriptions, cosmetic agents or most over-the-counter medications. This sub-

section does not require that any particular category of coverage for drugs or pharmacy services should be excluded, reduced, or limited by a health plan.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its website or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

(4) A carrier must include the following statement in the certificate of coverage issued for a health benefit plan, policy, or agreement that includes a prescription drug benefit, and provide current contact information as prompted below:

YOUR PRESCRIPTION DRUG RIGHTS

You have the right to safe and effective pharmacy services. You also have the right to know what drugs are covered by your plan and the limits that apply. If you have a question or concern about your prescription drug benefits, please contact us (the health carrier) at (health carrier's contact phone number) or visit (health carrier's website). If you would like to know more about your rights, or if you have concerns about your plan, you may contact the Washington state office of insurance commissioner at 1-800-562-6900 or www.insurance.wa.gov. If you have a concern about the pharmacists or pharmacies serving you, please contact the Washington state department of health at 360-236-4700, www.doh.wa.gov, or HSQACSC@doh.wa.gov.

WSR 20-19-138

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 23, 2020, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-147.

Title of Rule and Other Identifying Information: Campus parking and traffic regulations for Washington State University Health Sciences Spokane, chapter 504-14 WAC.

Hearing Location(s): On October 28, 2020, at 4:00 p.m.
Zoom meeting: Join from PC, Mac, Linux, iOS, or Android:
<https://wsu.zoom.us/j/94610683999?pwd=UDF4bEFZVTNwdEpuRkVpSFZlQ0JsZ09>, Meeting ID: 946 1068 3999,

Passcode: 969186; OR join by telephone (long distance): +1-669-900-9128 (enter the meeting ID and passcode when prompted).

Due to the public health emergency resulting from COVID-19 and guidance/directives from the Washington department of health, no in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: November 25, 2020.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 28, 2020.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the campus parking and traffic regulations for Washington State University Health Sciences Spokane.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Stan Lewis, Assistant Director, Facilities Services, WSU Health Services Spokane, Center for Clinical Research and Simulation and Parking Office, Room 310, 412 East Spokane Falls Boulevard, Spokane, WA 99202, 509-358-7871; Implementation: Jon Schad, Campus Facilities Executive, Facilities Services, WSU Health Services Spokane, Center for Clinical Research and Simulation and Parking Office, Room 310, 412 East Spokane Falls Boulevard, Spokane, WA 99202, 509-358-7991; and Enforcement: Daryl DeWald, Chancellor, WSU Health Services Spokane, Academic Center 525, 412 East Spokane Falls Boulevard, Spokane, WA 99202, 509-358-7521.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The amendments to WSU Health Sciences Spokane parking regulations only apply to students, employees, and visitors at the WSU Health Sciences Spokane campus, and do not affect business or commerce in any way.

September 23, 2020

Deborah L. Bartlett, Director
Procedures, Records, and Forms

and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Access-control/gate card. A plastic card that provides access to a location, building, or parking area, and/or activates a gate or similar device controlling access to certain parking areas.

(2) Campus. Describes all property owned, leased, and/or controlled by the WSUS campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) Disability parking. See individuals with disability.

(5) Disability zone. A parking zone designated for exclusive use by individuals with disability and identified with a sign bearing the associated international symbol.

(6) Electric-assisted bicycle. As defined under RCW 46.04.169.

(7) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

(8) Holiday. See university holiday.

(9) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a counterfeit parking permit or indicator.

(c) Use of a parking permit or indicator obtained under false pretenses.

(d) Use of a modified parking permit or indicator.

(e) Use and/or retention of a parking permit or indicator by individual(s) ineligible, or no longer eligible, for such permit as described and authorized in this chapter.

(10) Impound. To take and hold a vehicle in legal custody by use of a (~~wheel lock~~) vehicle immobilization device and/or towing.

(11) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

(12) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility or in a parking area. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

(13) Moped. As defined under RCW 46.04.304.

(14) Motorcycle. As defined under RCW 46.04.330.

(15) Motorized foot scooter. As defined under RCW 46.04.336.

(16) Motor vehicle. As defined under RCW 46.04.320. Also referred to as "vehicle" in this chapter.

(17) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

(18) Officer. Any parking or campus (~~safety and~~) security official employed by the university who is designated by the parking administrator or chancellor to place and remove (~~wheel locks~~) vehicle immobilization devices or to cause vehicles to be towed under this chapter.

(19) Owner. The individual registered with any state as the present owner of a vehicle in the most current registration records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator has received actual written notice of the transfer.

(20) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

(21) Parking administrator. The manager in charge of the parking office or designee.

(22) Parking appeals committee. Any individual or individuals appointed to consider parking violations and the application of fees, fines, and sanctions. Said individual or individuals are appointed by the chancellor or designee whose responsibilities include supervision of the parking office.

(23) Parking office. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the WSUS campus.

(24) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

(25) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

(26) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking office that is displayed from a vehicle and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature (see definition of virtual permit in subsection ~~((47))~~ (50) of this section) and identified by other means, such as by license plate. Also referred to as "permit" in this chapter.

(27) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

(28) Pay parking facility. A location where parking is provided, and payment is made on-site via a parking payment device, cashier, or means other than a parking meter.

(29) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances.

(30) Individuals with disability. For the purpose of this chapter individuals with disability refers to an individual or individuals with disability or disabilities who qualify for a state-issued individual with disabilities parking identification and permit.

(31) Resident priority zone. A parking area close to a residence hall that is typically limited to use by residence hall students.

(32) Residence hall student. A student with a current, valid residence hall contract, who lives in a residence hall.

(33) Residence hall. Residence hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered residence hall students and are eligible for parking permits in resident priority zones.

(34) Service vehicle. A vehicle used to provide a service for WSUS or a tenant or contractor of WSUS (e.g., a university-owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

(35) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of fifteen minutes, except for vehicles that display a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

(36) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these rules.

(37) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

(38) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

(39) Student. The term student includes all individuals who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more class.

(40) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

(41) University. Refers to Washington State University Health Sciences Spokane or WSUS.

(42) University holiday. A day regarded by the university as an official university holiday.

(43) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

(44) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

(45) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of WSUS typically are open during this time.

(46) Vehicle immobilization device. A device used to temporarily immobilize a motor vehicle. Immobilized vehi-

cles are considered to be impounded in place and subject to storage fees.

(47) Vehicle immobilization-eligible list. The current list of vehicle immobilization-eligible vehicles as maintained by the parking office. A vehicle remains on the vehicle immobilization-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(48) Vehicle immobilization-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains vehicle immobilization-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(49) Vehicle storage. Vehicle storage means the parking or leaving of any vehicle for a period of more than twenty-four consecutive hours.

~~((47))~~ (50) Virtual permit. A virtual permit is authorization given at the time of vehicle registration with the parking office, allowing the registered vehicle to park in a designated lot, zone, or space. The virtual permit is associated to the vehicle license plate number and is used to identify the parking authorization.

~~((48))~~ (51) Visitors. Individuals who are not staff or students and who only visit the campus on an occasional basis.

~~((49))~~ Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

~~(50)~~ Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking office. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~(51)~~ Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.)

(52) WSU disability permit. WSU-issued zone permit displayed with a valid state-issued disability placard or disability license plate.

(53) WSUS. Washington State University Health Sciences Spokane.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-200 Enforcement authority. The uni-versity parking office staff and ~~((the safety and))~~ security officers are charged with the impartial enforcement of these

regulations and have authority to issue parking tickets, to impound vehicles, and to control access to areas.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-350 Use of areas for emergency, maintenance, events, construction, or special needs. WSUS reserves the right to close and/or restrict access to any campus parking area, roadway, and/or sidewalk at any time it is deemed necessary for maintenance, safety, events, construction, or to meet special needs. The parking office provides notice to users when possible.

Public safety, (~~safety and~~) security, and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-510 Parking permits—General. (1) The university issues parking permits for designated areas of the campus. Any vehicle parked on the campus must clearly display a valid university parking permit in accordance with this chapter during the posted hours when and where permits are required. University staff and students may not use any other permit in lieu of a valid university parking permit.

(2) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking office or campus (~~safety and~~) security in the event that the owner's vehicle becomes inoperable when the vehicle is parked on campus.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-810 Violations, fines, and sanctions. (1) Violations and fines. Parking violations are processed by the university. Fines must be paid at the parking office or at other authorized locations by mail, or from the university's parking website. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking office and on the university's parking website.

(2) Reduction of fines. Internal policies regarding disposition of parking tickets may be established on approval of the chancellor or designee whose responsibilities include supervision of the parking office.

(3) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking office in the event that the owner's vehicle becomes inoperable when the vehicle is present on campus.

(4) Payment of parking fines.

(a) All parking fines are due upon issuance of a parking ticket. Thirty days after date of issuance of a parking ticket, a late fee is added to all unpaid parking fines. For example, a parking ticket issued on May 1st is assessed a late fee on May 31st.

(b) Failure to pay the fine and fee assessed for any violation results in referral to the university controller's office for internal collection.

(c) Account balances not paid to the university voluntarily may be forwarded to an external collections agency and

are subject to additional collection fees of up to fifty percent, attorney's fees, and court costs when necessary.

(d) Where collection efforts are unsuccessful, the controller or designee may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid.

(e) The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the (~~wheel lock~~) vehicle immobilization device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the (~~wheel lock~~) vehicle immobilization device.

(5) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-860 Appeal procedures. The parking ticket represents a determination that a parking violation has been committed and the determination is final unless otherwise provided for or appealed as provided in this chapter.

(1) Purpose. The parking appeals process serves three primary functions:

(a) To hear parking ticket appeals;

(b) To hear appeals of (~~wheel lock~~) vehicle immobilization eligibility determination; and

(c) To hear appeals of impoundments.

(2) Procedure. Any individual who has received a parking ticket may appeal the alleged parking violation. Appeal of (~~wheel lock~~) vehicle immobilization eligibility determinations and impoundments are described in WAC 504-14-865 and 504-14-870.

(3) Written parking ticket appeals. The appeal must be in writing and received at the parking office within ten calendar days of issuance of the parking ticket. Online forms for this purpose are available from the parking office. The parking appeals committee makes an initial decision regarding the appeal within twenty calendar days during the academic year and within thirty calendar days during the summer months after receipt of the appeal. The committee provides a brief statement of the reason for its decision to the appellant within ten calendar days of the decision.

(4) Review hearing of initial decision. If the appellant is dissatisfied with the initial decision, the appellant may request a hearing before a hearing officer or the parking appeals committee. Such a request must be made within ten calendar days of the date of the initial parking appeals committee decision. If no such request is received, the initial decision is final. During the hearing the appellant and representatives of the parking office may present and cross-examine witnesses. The hearing officer or appeals committee must render a decision in writing and provide appellant with the decision within ten calendar days after the hearing.

(5) Appeal to district court. RCW 28B.10.560 provides that an individual who is not satisfied with the final decision

of the university may appeal to district court. The application for appeal to district court must be in writing and must be filed at the parking office within ten calendar days after the date of the review hearing. The parking office forwards the documents relating to the appeal to the district court.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-865 General. (1) Pursuant to the provisions of this chapter, an officer must cause a vehicle to be ~~((wheel lock))~~ vehicle immobilized, or towed, or both, if:

- (a) The vehicle is on the ~~((wheel lock))~~ vehicle immobilization-eligible list; or
- (b) The vehicle displays a lost, stolen, or counterfeit parking permit.
- (2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:
 - (a) Has been immobilized by ~~((wheel lock))~~ a vehicle immobilization device for more than twenty-four hours; or
 - (b) Is illegally parked in a marked tow-away zone; or
 - (c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or
 - (d) Cannot be immobilized with a ~~((wheel lock))~~ vehicle immobilization device; or
 - (e) Is illegally parked in a disability space; or
 - (f) Is parked in an area designated to be used for emergencies, maintenance, events, or construction; or
 - (g) Is otherwise illegally parked based on the executive authority of the parking office or university ~~((safety and))~~

(3) The driver and/or owner of a towed vehicle must pay towing and storage expenses.

(4) Any vehicle immobilized by use of ~~((the wheel lock))~~ a vehicle immobilization device in excess of twenty-four hours is assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(5) The university assumes no responsibility in the event of damages resulting from towing, use of ~~((wheel lock))~~ vehicle immobilization devices, storage, or attempts to move a vehicle with a ~~((wheel lock))~~ vehicle immobilization device installed.

(6) No vehicle impounded by towing or ~~((wheel lock))~~ vehicle immobilization devices is released until the following fines are paid in cash or with an approved payment card:

- (a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the violator and/or owner;
- (b) A ~~((wheel lock))~~ vehicle immobilization fee; and
- (c) All towing and storage fees.

(7) An individual wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-14-860. However, in order to secure release of the vehicle, such individual must pay the amount of such fines or fees as a bond which is refunded to the extent the appeal is successful.

(8) An accumulation of six unpaid violations during any twelve-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the

violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-870 (~~((Wheel Lock))~~) Vehicle immobilization-eligible list. (1) The parking administrator is responsible for creating and maintaining the ~~((wheel lock))~~ vehicle immobilization-eligible list. See definition of "~~((wheel lock))~~ vehicle immobilization-eligible vehicle" under WAC 504-14-100~~((51))~~ (48).

(2) A ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list after notice has been issued as provided in subsection (3) of this section and an appeal of the ~~((wheel lock))~~ vehicle immobilization eligibility determination, if requested, under subsection (4) of this section.

(3) At least ten days prior to placing a vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list, the parking administrator must mail a notice to the owner. The parking administrator mails the notice to the address stated on the most current registration records available to the university from a state, or any more current address of which the parking administrator has actual written notice. The notice is sent by first class United States mail, postage prepaid. The notice must set forth:

(a) The make and license plate number of the alleged ~~((wheel lock))~~ vehicle immobilization-eligible vehicle.

(b) A specified date on which the ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(c) A list of the three or more alleged unpaid parking tickets, including the parking ticket number, date, time, place of the violation, and the nature of the violation. This list must include all unpaid parking tickets issued to a particular vehicle to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(d) That the owner may avoid the placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date on which the vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(e) The name, mailing address (and street address if different), and telephone number of the parking office that may be contacted to appeal the ~~((wheel lock))~~ vehicle immobilization eligibility determination. Such an appeal only considers whether an individual vehicle was properly placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list and not the merits of an individual parking ticket, which may be addressed pursuant to a separate appeals process described in WAC 504-14-860.

(f) That the vehicle is subject to ~~((wheel lock))~~ vehicle immobilization, towing, or both once it is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(g) That all late fees, ~~((wheel lock))~~ vehicle immobilization fees, towing, and storage fees are payable in full to obtain the release of a vehicle ~~((wheel locked))~~ immobilized or towed pursuant to this chapter in addition to payment of any and all unpaid parking tickets on this vehicle or other vehicles owned by the registered owner to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(4) If a request for an appeal of a ~~((wheel lock))~~ vehicle immobilization eligibility determination is received by the parking administrator before the specified date in the notice for placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list, then the parking administrator must afford the owner an opportunity to appeal the ~~((wheel lock))~~ vehicle immobilization eligibility determination prior to the placing of a vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list. Although the parking administrator does not have the authority to adjudicate the merits of any parking ticket, they must, however, receive evidence and other input from the owner appealing the ~~((wheel lock))~~ vehicle immobilization eligibility determination that the notice given under subsection (3) of this section was erroneous or based on erroneous information.

(5) If an owner timely participates in the appeal as scheduled by the parking administrator, the administrator must furnish the owner written notice of ~~((his or her))~~ their decision prior to placing the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(6) After the specified date provided in the notice issued under subsection (3) of this section, the parking administrator must review the records to ensure that the alleged unpaid parking tickets have not been paid or otherwise resolved, and that no information has been received indicating that the notice was erroneous.

(7) Once a vehicle has been placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list, it must not be removed from the list unless and until:

(a) The fines and fees on all unpaid parking tickets issued during the time it has been registered to or otherwise held by the owner are paid or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees;

(b) The parking administrator receives reliable information that title to the vehicle has been transferred; or

(c) The parking administrator determines that the placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list was erroneous.

(8) If a vehicle is not properly registered in any state or no registration information is available to the university and the vehicle is ~~((wheel lock))~~ vehicle immobilization eligible, then notice is provided by posting on the vehicle a conspicuous notice, which must set forth:

(a) A description of the alleged ~~((wheel lock))~~ vehicle immobilization-eligible vehicle;

(b) A specified date on which the ~~((wheel lock))~~ vehicle immobilization-eligible vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list;

(c) That the owner may avoid placement of the vehicle on the ~~((wheel lock))~~ vehicle immobilization-eligible list by making payment in full of fines and late fees on all unpaid

parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees by the specified date certain on which the vehicle is subject to placement on the ~~((wheel lock))~~ vehicle immobilization-eligible list; and

(d) That the vehicle is subject to ~~((wheel lock))~~ vehicle immobilization, towing, or both once it is placed on the ~~((wheel lock))~~ vehicle immobilization-eligible list.

(9) An officer must attempt to ~~((wheel lock))~~ provide vehicle immobilization on any vehicle which appears on the ~~((wheel lock))~~ vehicle immobilization-eligible list when parked, lawfully or unlawfully, on campus.

(10) The parking administrator must ensure ~~((that))~~ officers are on duty or services are available to remove ~~((wheel locks))~~ vehicle immobilization devices from vehicles Monday through Friday between 8:00 a.m. and 5:00 p.m.; except during recognized holidays.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-880 Fees, fines, and release of an impounded vehicle. The owner of an impounded vehicle may not secure the release of the stored vehicle until payment in full of fines and fees has been made on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees relating to the vehicle which were issued while the vehicle was owned by the individual who owned the vehicle at the time it is ~~((wheel locked))~~ immobilized by a vehicle immobilization device or towed hereunder, and the owner has paid in full the ~~((wheel lock))~~ vehicle immobilization fee, unpaid parking tickets, late fees, storage fees, and towing fees for any and all other vehicles owned by the registered owner.

AMENDATORY SECTION (Amending WSR 19-09-080, filed 4/17/19, effective 5/18/19)

WAC 504-14-885 Theft, damage, or removal of a ~~((wheel lock))~~ vehicle immobilization device. The following conduct of any individual must be reported to the parking office or university ~~((safety and))~~ security:

(1) Causing physical damage to a ~~((wheel lock))~~ vehicle immobilization device;

(2) Removing, or attempting to remove, a ~~((wheel lock))~~ vehicle immobilization device; or

(3) Taking or stealing a ~~((wheel lock))~~ vehicle immobilization device.

WSR 20-19-139

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-07—Filed September 23, 2020, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-083.

Title of Rule and Other Identifying Information: Continued implementation of chapter 427, Laws of 2019, Balance Billing Protection Act (BBPA).

Hearing Location(s): On October 27, 2020, at 3:00 p.m. Via Zoom: To register: <https://wa-oic.zoom.us/join/join/join/register/tJYpc-GvrjIpEtYA6ko3xhn6iV9en1QAS2bu>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: October 29, 2020.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 26, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by October 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal includes revisions to rules adopted in 2019 determined by the office of the insurance commissioner (OIC) to be necessary for administration of BBPA. The rule includes revisions to:

- Arbitration processes, including use of standardized forms for arbitration initiation requests and arbitration decision reporting; establishment of a website for carrier arbitration contact information; arbitrator conflict of interest review, and process related to settlement of disputes.
- Provider notice as to whether a patient's health plan is subject to the act, through use of a HIPAA standardized remittance advice transaction notice.
- Increase consumer knowledge of their rights, by requiring providers to give consumers notice of their rights under the act following their receipt of emergency medical services and authorizing the notice to be provided electronically in certain circumstances.
- OIC enforcement of the act.
- Self-funded group health plan election to participate, including reducing the period of advance notice required to participate or to terminate participation.

Reasons Supporting Proposal: The proposed rule provides additional clarity regarding several issues related to administration of BBPA that have arisen since implementation of the act in January 2020. The revisions will contribute to continued successful implementation of the act and its consumer protections.

Statutory Authority for Adoption: RCW 48.49.060, 48.49.110, 48.43.730.

Statute Being Implemented: Chapter 427, Laws of 2019, Balance Billing Protection Act, codified at chapter 48.49 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40260, Olympia, WA, 360-725-7043; Implementation: Molly Nolette/Todd Dixon, P.O. Box 40255, Tumwater, WA, 360-725-7117/360-725-7262; and

Enforcement: Toni Hood, P.O. Box 40255, Tumwater, WA, 360-725-7050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7170, email TabbaA@oic.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Small Business Economic Impact Statement

A rule concerning amending WSR 19-23-085, chapter 284-43B WAC to streamline rules necessary to implement and administer the Balance Billing Protection Act (BBPA)

By: Tabba Alam, Economic Policy Analyst

Background: The purpose of this rule is to amend WSR 19-23-085, chapter 284-43B WAC, which pertains to rules necessary to implement and administer BBPA (chapter 427, Laws of 2019, codified at chapter 48.49 RCW), ensuring that consumers are protected from wrongful balance billing.

Citation of rules affected by this rule include:

1. WAC 284-43B-035(6), (9), (11).
2. WAC 284-43B-040 (1)(b).
3. WAC 284-43B-050(2), (3).
4. WAC 284-43B-070(2).

When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so. In this analysis we will discuss the steps taken to minimize the financial impact to small businesses.

Probable cost to all stakeholders: OIC presumes that carriers will comply with the law and regulations set forth in BBPA (chapter 427, Laws of 2019, codified at chapter 48.49 RCW). Thus, OIC has determined that by amending WSR 19-23-085 with the sole purpose of clarifying provisions of its BBPA rules, it does not impose more than minor costs upon businesses that comply with these laws and regulations.

Further, the proposed rule clarifies "good cause" for purposes of delay in written submissions to an arbitrator to facilitate settlement negotiations. OIC has determined that having this opportunity would mean fewer disputes that may go to formal arbitration, which is a considerable cost savings to carriers and providers.

Probable cost to small Business: OIC has determined that the compliance with the proposed rule does not put any disproportionate fiscal impact on small businesses. When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so.

OIC had made an effort to recognize even minimal cost impacts to small businesses. Further, as there are no more than minor costs associated with these rules, OIC has applied a default cost of compliance (\$100) when analyzing whether the proposed rule would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). It is to be noted here that implementation of the proposed rule will not

result in any administrative, intrinsic or actual costs to the stakeholders as they at present have preexisting process[es] to accommodate the amendments recommended in the proposed legislation.

Below are calculations for minor cost thresholds across stakeholder[s] that classify as a small business based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the small business stakeholders.

We have analyzed small businesses impacted by every WAC amended. Please see the following:

1. WAC 284-43B-035:

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Average number of employees/business within WA	Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPay)
541110	\$100.00	Offices of lawyers	Professional, scientific, and technical services	6	\$990.86
541199	\$100.00	All other legal services	Professional, scientific, and technical services	7	\$539.82
541340	\$100.00	Drafting services	Professional, scientific, and technical services	3	\$497.32

- Subsection (6), due to this proposed amendment arbitrators will need to ensure that they don't have a conflict of interest. However, in practice, OIC believes that arbitrators routinely engage in this inquiry prior to taking a case. Also, please look at our cost analysis below.
- Subsection (9), this amendment require arbitrators to use a form included in the rule to submit information about their case. It is important to note here that arbitrators are already required to report to OIC by RCW 48.49.040 - [48.49].050. OIC believes that use of a standardized form will only further simplify and clarify the process for the stakeholder.

2. WAC 284-43B-040: Although the amendment to this section does not impact small businesses, we have analyzed the impact it will have on health insurance carriers and providers. This section requires the health insurance companies to have an indicator in their HIPAA standard transaction 835, (this is the remittance advice that is sent to the provider by the health insurance carrier to let them know how much they have paid for a claim) indicating whether a claim is subject to the BBPA. This will be a cost limited to health insurance carriers.

OIC believes the proposed changes will provide clear information to a provider as to whether a claim is subject to the BBPA, thus making it apparent when a patient cannot be balance billed. This is the key goal of the law and we have established that the cost to carriers is outweighed by the benefit to consumers of protecting them from balance billing. The language clearly identifies those claims that can be put into dispute by providers, reducing provider costs associated with putting a claim into dispute. Please review our analysis below:

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Average number of employees/business within WA	Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPay)
524114	\$500.00	Direct health and medical insurance carriers	Finance and insurance	118 (<i>Not small business</i>)	\$870.29

3. WAC 284-43-050: Subsection (1)(b) requires providers of emergency medical services to give the notice of BBPA consumer rights to patients after receiving emergency medical services. Providers of emergency medical services are hospital emergency rooms, which are not small employ-

ers. Consumers must have notice of their rights at meaningful times, and the BBPA protects consumers from balance billing when they're receiving out-of-network emergency medical services.

2019 Industry NAICS Code	Estimated Cost of Compliance (x 5 (small business estimated cost of compliance))	Industry Description	NAICS Code Title	Average number of employees/business within WA	Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPay)
622110	\$500	Healthcare and social assistance	General medical and surgical hospitals	1624	[\$]816.69
622210	\$500	Healthcare and social assistance	Psychiatric and substance abuse hospitals	155	[\$]627.94
622310	\$500	Healthcare and social assistance	Other hospitals	276	[\$]866.82
622	\$500	Healthcare and social assistance	Hospitals	1198	[\$]812.91

4. WAC 284-43B-070: Subsection (1) clarifies that if a self-funded group health plan opts in to participate in the BBPA, they must let their third party administrator know they've done so. This is de minimis [minimis] cost. Also, it is to be noted that this WAC section does not impose any mandated costs to self-funded insured groups but only gives them an option [to] elect to participate in the BBPA, and thereby provide protections from balance billing to their employees.

Steps taken to reduce the costs of the rule on small businesses: OIC has determined that the proposed legislation is unlikely to impose disproportionate fiscal impact on small businesses, if any. Since January 1, 2020, OIC has experienced implementation of a new statute. We have heard directly from stakeholders regarding questions and issues related to initial implementation and have revised internal processes to respond to some of these issues. Through rule making, OIC has elicited input from stakeholders related to questions or issues that needed clarification in rule, via a CR-101 comment period, distribution of two stakeholder drafts and holding two stakeholder meetings, OIC determined that some modification and clarification of the initial BBPA rules was necessary. We determined key issues and drafted the rule with the goal of minimizing the impact on small businesses. The rule team's efforts to minimize costs are as follows:

WAC 284-43B-035(1) requires providers who want to submit an arbitration initiation request to use a standardized form specified at Appendix A. This could potentially be a cost savings to providers, as they will have both clear access to what information needs to be provided to OIC, by statute, and a standardized form to provide the information. In addition, prior to this rule making, the provider had to figure out the correct carrier contact information to send the arbitration initiation notice to. WAC 284-43B-035(1) establishes a streamlined way for providers to obtain this information, via a website hosted by **OneHealthPort**, carriers will submit contact information to that website. We believe this will facilitate providers identifying accurate carrier contacts.

WAC 284-43B-035(9) could lead to potential cost savings to providers and carriers. As mentioned above, the proposed rule clarifies "good cause" for purposes of delay in making written submissions to an arbitrator, to facilitate settlement negotiations. OIC has determined that having this opportunity would mean fewer disputes that may go to formal arbitration, which is a considerable cost savings to both health carriers and health care providers. Further, use of a standardized form to report the results of arbitration under proposed WAC 284-43-035(12) simplifies the process and clearly identifies the information that must be submitted by arbitrators to OIC.

It is to be noted that WAC 284-43B-050(2) requires emergency medical services facilities (i.e. hospitals) to send consumers the notice of their rights under the BBPA within seventy-two hours of the consumer receiving emergency medical services. The rule team has taken steps to clearly outline that this requirement only applies to entities **with more than fifty employees** (and hospitals have more than fifty employees). Although, there is a minimal cost of providing this notice independently, it can be completely annulled by including it in the information that the hospital routinely provides to patients in the emergency room. It is critical that con-

sumers receive notices of their rights at a meaningful time, which means receiving the notice when, or shortly after, they have received services that are subject to the balance billing prohibition.

WAC 284-43B-050(3) can result in cost savings to carriers and providers. The section will allow the notice to be provided electronically if the consumer has opted to receive electronic communications from the carrier or provider, negating the need for paper copies and their associated costs.

Conclusion: There is always some degree of uncertainty in anticipating what the costs and benefits of adopted rules will ultimately be. That said, within the constraints of our resources, we have attempted to provide estimates that are as accurate as possible by performing a comprehensive analysis that is data-driven and evidence-based.

Based on the analysis from this report, the department of labor and industries (L&I) estimates the total annual compliance cost for different businesses in Washington and the Washington State Auditor Minor Cost Threshold Calculator July 2019, OIC establishes the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

A copy of the detailed cost calculations may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov.

September 23, 2020

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-010 Definitions. (1) The definitions in RCW 48.43.005 apply throughout this chapter unless the context clearly requires otherwise, or the term is defined otherwise in subsection (2) of this section.

(2) The following definitions shall apply throughout this chapter:

(a) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

(b) "Balance bill" means a bill sent to an enrollee by an out-of-network provider or facility for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of permitted cost-sharing.

(c) "De-identified" means, for the purposes of this regulation, the removal of all information that can be used to identify the patient from whose medical record the health information was derived.

(d) "Emergency medical condition" means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder

treatment attention to result in a condition (i) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

~~((f))~~ ~~(e)~~ "Emergency services" means a medical screening examination, as required under section 1867 of the Social Security Act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the Social Security Act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867 (e)(3) of the Social Security Act (42 U.S.C. 1395dd (e)(3)).

~~((f))~~ ~~(f)~~ "Facility" means a hospital licensed under chapter 70.41 RCW or an ambulatory surgical facility licensed under chapter 70.230 RCW.

~~((f))~~ ~~(g)~~ "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations. A single case reimbursement agreement between a provider or facility and a carrier used for the purpose described in WAC 284-170-200 constitutes a contract exclusively for purposes of this definition under the Balance Billing Protection Act and is limited to the services and parties to the agreement.

~~((g))~~ ~~(h)~~ "Median in-network contracted rate for the same or similar service in the same or similar geographical area" means the median amount negotiated for an emergency or surgical or ancillary service for participation in the carrier's health plan network with in-network providers of emergency or surgical or ancillary services furnished in the same or similar geographic area. If there is more than one amount negotiated with the health plan's in-network providers for the emergency or surgical or ancillary service in the same or similar geographic area, the median in-network contracted rate is the median of these amounts. In determining the median described in the preceding sentence, the amount negotiated for each claim for the same or similar service with each in-network provider is treated as a separate amount (even if the same amount is paid to more than one provider or to the same provider for more than one claim). If no per-service amount has been negotiated with any in-network providers for a particular service, the median amount must be calculated based upon the service that is most similar to the service provided. For purposes of this subsection "median" means the middle number of a sorted list of reimbursement amounts negotiated with in-network providers with respect to a certain emergency or surgical or ancillary service, with each paid claim's negotiated reimbursement amount separately represented on the list, arranged in order from least to greatest. If there is an even number of items in the sorted list of negotiated reimbursement amounts, the median is found by taking the average of the two middlemost numbers.

~~((h))~~ ~~(i)~~ "Offer to pay," "carrier payment," or "payment notification" means a claim that has been adjudicated and paid by a carrier to an out-of-network or nonparticipating provider for emergency services or for surgical or ancillary services provided at an in-network facility.

~~((h))~~ ~~(j)~~ "Out-of-network" or "nonparticipating" means a provider or facility that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

~~((h))~~ ~~(k)~~ "Provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law, or an employee or agent of a person acting in the course and scope of his or her employment, that provides emergency services, or surgical or ancillary services at an in-network facility.

~~((h))~~ ~~(l)~~ "Surgical or ancillary services" means surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing. (1) If an enrollee receives any emergency services from an out-of-network facility or provider, or any nonemergency surgical or ancillary services at an in-network facility from an out-of-network provider:

(a) The enrollee satisfies his or her obligation to pay for the health care services if he or she pays the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographical area. The carrier must provide an explanation of benefits to the enrollee and the out-of-network provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, out-of-network provider, or out-of-network facility, and any agent, trustee, or assignee of the carrier, out-of-network provider, or out-of-network facility must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c)(i) For emergency services provided to an enrollee, the out-of-network provider or out-of-network facility, and any agent, trustee, or assignee of the out-of-network provider or out-of-network facility may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest;

(ii) For emergency services provided to an enrollee in an out-of-network hospital located and licensed in Oregon or Idaho, the carrier must hold an enrollee harmless from balance billing; and

(iii) For nonemergency surgical or ancillary services provided at an in-network facility, the out-of-network provider and any agent, trustee, or assignee of the out-of-network provider may not balance bill or otherwise attempt to

collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest.

(d) For emergency services and nonemergency surgical or ancillary services provided at an in-network facility, the carrier must treat any cost-sharing amounts determined under (a) of this subsection paid or incurred by the enrollee for an out-of-network provider or facility's services in the same manner as cost-sharing for health care services provided by an in-network provider or facility and must apply any cost-sharing amounts paid or incurred by the enrollee for such services toward the enrollee's maximum out-of-pocket payment obligation.

(e) If the enrollee pays an out-of-network provider or out-of-network facility an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the provider or facility must refund any amount in excess of the in-network cost-sharing amount to the enrollee within thirty business days of the provider or facility's receipt of the enrollee's payment. Simple interest must be paid to the enrollee for any unrefunded payments at a rate of twelve percent per annum beginning on the first calendar day after the thirty business days.

(2) The carrier must make payments for health care services described in ~~((section 6, chapter 427, Laws of 2019))~~ RCW 48.49.020, provided by an out-of-network provider or facility directly to the provider or facility, rather than the enrollee.

(3) A health care provider or facility, or any of its agents, trustees or assignees may not require a patient at any time, for any procedure, service, or supply, to sign or execute by electronic means, any document that would attempt to avoid, waive, or alter any provision of this section.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-030 Out-of-network claim payment and placing a claim into dispute ((resolution)). The allowed amount paid to an out-of-network provider for health care services described under ~~((section 6, chapter 427, Laws of 2019))~~ RCW 48.49.020, shall be a commercially reasonable amount, based on payments for the same or similar services provided in the same or a similar geographic area.

(1) Within thirty calendar days of receipt of a claim from an out-of-network provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. Payment of an adjudicated claim shall be considered an offer to pay. The amount actually paid to an out-of-network provider by a carrier may be reduced by the applicable consumer cost-sharing determined under WAC 284-43B-020 (1)(a). The date of receipt by the provider or facility of the carrier's offer to pay is five calendar days after a transmittal of the offer is mailed to the provider or facility, or the date of transmittal of an electronic notice of payment. The claim submitted by the out-of-network provider or facility to the carrier must include the following information:

- (a) Patient name;
- (b) Patient date of birth;

- (c) Provider name;
- (d) Provider location;
- (e) Place of service, including the name and address of the facility in which, or on whose behalf, the service that is the subject of the claim was provided;
- (f) Provider federal tax identification number;
- (g) Federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number;
- (h) Date of service;
- (i) Procedure code; and
- (j) Diagnosis code.

(2) If the out-of-network provider or facility wants to dispute the carrier's offer to pay, the provider or facility must notify the carrier no later than thirty calendar days after receipt of the offer to pay or payment notification from the carrier. A carrier may not require a provider or facility to reject or return payment of the adjudicated claim as a condition of putting the payment into dispute.

(3) If the out-of-network provider or facility disputes the carrier's offer to pay, the carrier and provider or facility have thirty calendar days after the provider or facility receives the offer to pay to negotiate in good faith.

(4) If the carrier and the out-of-network provider or facility do not agree to a commercially reasonable payment amount within the thirty-calendar day period under subsection (3) of this section, and the carrier, out-of-network provider or out-of-network facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration, as provided in ~~((section 8, chapter 427, Laws of 2019))~~ RCW 48.49.040.

~~((5)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under subsection (3) of this section. The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in subsections (1) through (4) of this section.~~

~~(b) If an out-of-network provider or out-of-network facility chooses to address multiple claims in a single arbitration proceeding as provided in section 8, chapter 427, Laws of 2019, notification must be provided no later than ten calendar days following completion of the period of good faith negotiation under subsection (3) of this section for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:~~

- ~~(i) Involve identical carrier and provider or facility parties;~~
- ~~(ii) Involve claims with the same or related current procedural terminology codes relevant to a particular procedure; and~~
- ~~(iii) Occur within a two month period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than two months prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the ser-~~

vice is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

~~(e) A notification submitted to the commissioner later than ten calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.~~

~~(d) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The arbitrator selection process must be completed within twenty calendar days of receipt of the original list of arbitrators from the commissioner, as follows:~~

~~(i) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of five arbitrators within five calendar days of receipt of notice from the parties under this subsection.~~

~~(ii) If, after the opportunity to veto up to two of the five named arbitrators on the list of five arbitrators sent by the commissioner to the parties, more than one arbitrator remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators. The commissioner will choose the arbitrator from among the remaining arbitrators on the list.~~

~~(e) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.~~

~~(6) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.)~~

NEW SECTION

WAC 284-43B-035 Arbitration. (1)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form found in Appendix A of this rule. When multiple claims are addressed in a single arbitration proceeding, subsection (3) of this section governs calculation of the ten calendar days. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider initiating arbitration must send the arbitration initiation request form to the email address appearing on the website established by the designated lead organization for administration simplification in Washington state under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed.

(b) The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in WAC 284-43B-030 (1) through (3). The commissioner's review of the arbitration initiation request form is limited to the information necessary to determine that the request has been timely submitted and is complete.

(c) Each carrier must provide the designated lead organization for administrative simplification in Washington state with the email address and telephone number of the carrier's designated contact for receipt of notices to initiate arbitration. The email address and phone number provided must be specific to the carrier staff responsible for receipt of notices or other actions related to arbitration proceedings. The initial submission of information to the designated lead organization must be made on or before November 10, 2020. The carrier must keep its contact information accurate and current by submitting updated contact information to the designated lead organization as directed by that organization.

(2) Within ten business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must prohibit either party from sharing or making use of any confidential or proprietary information acquired or used for purposes of one arbitration in any subsequent arbitration proceedings. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under RCW 48.49.040 or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

(3) If an out-of-network provider or out-of-network facility chooses to address multiple claims in a single arbitration proceeding as provided in RCW 48.49.040, notification must be provided no later than ten calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:

(a) Involve identical carrier and provider or facility parties. A provider group may bundle claims billed using a common federal taxpayer identification number on behalf of the provider members of the group;

(b) Involve claims with the same or related current procedural terminology codes relevant to a particular procedure; and

(c) Occur within a two month period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than two months prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

(4) A notification submitted to the commissioner later than ten calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email address for the noninitiating party provided on the arbitration initiation request form. The arbitrator selection process must be completed within twenty calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of five arbitrators within five calendar days of receipt of notice from the parties under this subsection. Each party is responsible for reviewing the list of five arbitrators and notifying the commissioner within three calendar days of receipt of the list if there is a conflict of interest as described in subsection (6) of this section with any of the arbitrators on the list to avoid the commissioner assigning an arbitrator with a conflict of interest to an arbitration.

(b) If, after the opportunity to veto up to two of the five named arbitrators on the list of five arbitrators sent by the commissioner to the parties, more than one arbitrator remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators. The commissioner will choose the arbitrator from among the remaining arbitrators on the list.

(6) Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of interest includes (a) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (b) serves as or was employed by a physician, health care provider, or a health care facility; (c) has a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned.

(7) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.

(8) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.

(9) Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.

(10) If the parties settle the dispute before the arbitrator issues a decision, the parties must submit to the commissioner notice of the date of the settlement and whether the settlement includes an agreement for the provider to contract with the carrier as an in-network provider.

(11) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.

(12) The arbitrator must submit to the commissioner:

(a) Their decision; and

(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-040 Determining whether an enrollee's health plan is subject to the requirements of the act. (1) To implement (~~section 7, chapter 427, Laws of 2019,~~) RCW 48.49.030 carriers must make information regarding whether an enrollee's health plan is subject to the requirements of chapter (~~427, Laws of 2019,~~) 48.49 RCW available to providers and facilities by:

(a) Using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Eligibility Benefit Response (271) transaction information through use of a standard message that is placed in a standard location within the 271 transaction; and

(b) Beginning April 1, 2021, using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the X12 industry standard Remark Code N830 to indicate that the claim was processed in accordance with this state's balance billing rules.

(2) The designated lead organization for administrative simplification in Washington state(,);

(a) After consultation with carriers, providers and facilities through a new or an existing workgroup or committee, must post the language of the standard message and the location within the 271 transaction in which the message is to be placed on its website on or before November 1, 2019(~~This~~);

(b) Must post on its website on or before December 1, 2020, instructions on compliant use of the X12 industry standard Remark Code N830 in the X12 Health Care Claim Payment and Remittance Advice (835) transaction; and

(c) Must post on its website on or before December 1, 2020, the information reported by carriers under WAC 284-43B-035(1).

(3) A link to the information referenced in subsection (2) of this section also must be posted on the website of the office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-050 Notice of consumer rights and transparency. (1) The commissioner shall develop a standard template for a notice of consumer rights under the Balance Billing Protection Act. The notice may be modified periodically, as determined necessary by the commissioner. The notice template will be posted on the public website of the office of the insurance commissioner.

(2) The standard template for the notice of consumer rights under the Balance Billing Protection Act must be provided to consumers enrolled in any health plan issued in Washington state as follows:

(a) Carriers must:

(i) Include the notice in the carrier's communication to an enrollee, in electronic or any other format, that authorizes

nonemergency surgical or ancillary services at an in-network facility;

(ii) Post the notice on their website in a prominent and relevant location, such as in a location that addresses coverage of emergency services and prior authorization requirements for nonemergency surgical or ancillary services performed at in-network facilities; and

(iii) Provide the notice to any enrollee upon request.

(b) Health care facilities and providers must:

(i) For any facility or provider that is owned and operated independently from all other businesses and that has more than fifty employees, upon confirming that a patient's health plan is subject to the Balance Billing Protection Act((7));

(A) Include the notice in any communication to a patient, in electronic or any other format(, confirming the) related to scheduling of nonemergency surgical or ancillary services at a facility. Text messaging used as a reminder or follow-up after a patient has already received the full text of the notice under this subsection may provide the notice through a link to the provider's webpage that takes the patient directly to the notice. Telephone calls to patients following the patient's receipt of the full text of the notice under this subsection do not need to include the notice; and

(B) For facilities providing emergency medical services, provide or mail the notice to a patient within seventy-two hours following a patient's receipt of emergency medical services.

(ii) Post the notice on their website, if the provider or facility maintains a website, in a prominent and relevant location near the list of the carrier health plan provider networks with which the provider or facility is an in-network provider; and

(iii) Provide the notice upon request of a patient.

(3) The notice required in this section may be provided to a patient or an enrollee electronically if it includes the full text of the notice and if the patient or enrollee has affirmatively chosen to receive such communications from the carrier, provider, or facility electronically. Except as authorized in subsection (2)(b)(i)(A) of this section, the notice may not be provided through a hyperlink in an electronic communication.

(4) For claims processed on or after July 1, 2020, when processing a claim that is subject to the balance billing prohibition in ((section 6, chapter 427, Laws of 2019)) RCW 48.49.020, the carrier must indicate on any form used by the carrier to notify enrollees of the amount the carrier has paid on the claim:

(a) Whether the claim is subject to the prohibition in the act; and

(b) The federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number.

((4)) (5) A facility or health care provider meets its obligation under ((section 11 or 12, chapter 427, Laws of 2019)) RCW 48.49.070 or 48.49.080, to include a listing on its website of the carrier health plan provider networks in which the facility or health care provider participates by post-

ing this information on its website for in-force contracts, and for newly executed contracts within fourteen calendar days of receipt of the fully executed contract from a carrier. If the information is posted in advance of the effective date of the contract, the date that network participation will begin must be indicated.

((5)) (6) Not less than thirty days prior to executing a contract with a carrier, a hospital or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or provider groups that have privileges to practice at the hospital or ambulatory surgical facility or are contracted to provide surgical or ancillary services at the hospital or ambulatory surgical facility. The list must include the name of the provider or provider group, mailing address, federal tax identification number or numbers and contact information for the staff person responsible for the provider's or provider group's contracting. The hospital or ambulatory surgical facility must notify the carrier within thirty days of a removal from or addition to the nonemployed provider list. A hospital or ambulatory surgical facility also must provide an updated list of these providers within fourteen calendar days of a written request for an updated list by a carrier.

((6)) (7) An in-network provider must submit accurate information to a carrier regarding the provider's network status in a timely manner, consistent with the terms of the contract between the provider and the carrier.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-060 Enforcement. (1)(a) If the commissioner has cause to believe that any health facility or provider has engaged in a pattern of unresolved violations of ((section 6 or 7, chapter 427, Laws of 2019)) RCW 48.49.020 or 48.49.030, the commissioner may submit information to the department of health or the appropriate disciplining authority for action.

((2)) (b) In determining whether there is cause to believe that a health care provider or facility has engaged in a pattern of unresolved violations, the commissioner shall consider, but is not limited to, consideration of the following:

((a)) (i) Whether there is cause to believe that the health care provider or facility has committed two or more violations of ((section 6 or 7, chapter 427, Laws of 2019)) RCW 48.49.020 or 48.49.030;

((b)) (ii) Whether the health care provider or facility has failed to submit claims to carriers containing all of the elements required in WAC 284-43B-030(1) on multiple occasions, putting a consumer or consumers at risk of being billed for services to which the prohibition in ((section 6, chapter 427, Laws of 2019 applies)) RCW 48.49.020 applies;

((c)) (iii) Whether the health care provider or facility has been nonresponsive to questions or requests for information from the commissioner related to one or more complaints alleging a violation of ((section 6 or 7, chapter 427, Laws of 2019)) RCW 48.49.020 or 48.49.030; and

((d)) (iv) Whether, subsequent to correction of previous violations, additional violations have occurred.

((3)) (c) Prior to submitting information to the department of health or the appropriate disciplining authority, the

commissioner may provide the health care provider or facility with an opportunity to cure the alleged violations or explain why the actions in question did not violate (~~(section 6 or 7, chapter 427, Laws of 2019))~~ RCW 48.49.020 or 48.49.030.

(2) In determining whether a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner shall consider, but is not limited to, consideration of the following:

(a) Whether a carrier has failed to timely respond to arbitration initiation request notifications from providers or facilities;

(b) Whether a carrier has failed to comply with the requirements of WAC 284-43-035 related to choosing an arbitrator or arbitration entity;

(c) Whether a carrier has met its obligation to maintain current and accurate carrier contact information related to initiation of arbitration proceedings under WAC 284-43-035;

(d) Whether a carrier has complied with the requirements of WAC 284-43-040;

(e) Whether a carrier has complied with the consumer notice requirements under WAC 284-43-050; and

(f) Whether a carrier has committed two or more violations of chapter 48.49 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-070 Self-funded group health plan opt in. (1) A self-funded group health plan that elects to participate in (~~(sections 6 through 8, chapter 427, Laws of 2019))~~ RCW 48.49.020 through 48.49.040, shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by (~~(sections 6 through 8, chapter 427, Laws of 2019))~~ RCW 48.49.020 through 48.49.040 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least (~~(thirty))~~ fifteen days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in balance billing protections as provided in RCW 48.49.130 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by Washington state employer has elected to participate in balance billing protections under RCW 48.49.130 and has employees that reside in other states, those employees are protected from balance billing when receiving care from a Washington state provider.

(5) Self-funded group health plan sponsors and their third party administrators may develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).

NEW SECTION

WAC 284-43B-075 Severability. If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

NEW SECTION

WAC 284-43B-085 Appendix A.

1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with health insurance plans regulated by OIC and self-funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at <https://www.insurance.wa.gov/self-funded-group-health-plans> to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency, surgical or ancillary services at an in-network facility may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity, OIC will choose one and notify the parties, using the process outlined in WAC 284-43B-035(5). Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. The arbitrator also can require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC.

NEW SECTION

WAC 284-43B-090 Appendix B.



Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM	
ARBITRATOR'S INFORMATION	
Your name and contact Information:	
Date of your decision:	OIC Tracking Number:
DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050	
Name of carrier:	
Name of health care provider:	
Name and address of the health care provider's employer or business entity in which provider has ownership interest:	
Name and address of the health care facility where services were provided:	
Type of health care services at issue:	
<i>The arbitrator reporting statutory provisions are noted on the back of this form.</i>	

RELEVANT STATUTORY PROVISIONS

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. (Effective January 1, 2020.)

... (3)(a) Each party must make written submissions to the arbitrator in support of its position no later than thirty calendar days after the final selection of the arbitrator. The initiating party must include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. A party that fails to make timely written submissions under this section without good cause shown shall be considered to be in default and the arbitrator shall require the party in default to pay the final offer amount submitted by the party not in default and may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default. No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner.

RCW 48.49.050

Commissioner's annual report on dispute resolution information regarding arbitration over commercially reasonable payment amounts. (Effective January 1, 2020, until January 1, 2024.)

(1) The commissioner must prepare an annual report summarizing the dispute resolution information provided by arbitrators under RCW 48.49.040. The report must include summary information related to the matters decided through arbitration, as well as the following information for each dispute resolved through arbitration: The name of the carrier; the name of the health care provider; the health care provider's employer or the business entity in which the provider has an ownership interest; the health care facility where the services were provided; and the type of health care services at issue.

(2) The commissioner must post the report on the office of the insurance commissioner's web site and submit the report in compliance with RCW 43.01.036 to the appropriate committees of the legislature, annually by July 1st.

(3) This section expires January 1, 2024.

WSR 20-19-144

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed September 23, 2020, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-055.

Title of Rule and Other Identifying Information: Chapter 246-500 WAC, Handling of human remains, the state board of health (board) is considering rules regarding final disposition of human remains through alkaline hydrolysis and natu-

ral organic reduction. The board may also consider other updates as needed.

Hearing Location(s): On November 9, 2020, at 10:45 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the state board of health (SBOH) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone to listen to the meeting through the GoToWebinar application. The public may submit verbal comments during the specified rules hearing segment. Link: <https://attendee.gotowebinar.com/register/5079916753476116752>. You can also dial-in and listen/observe only using your phone: Dial-in: +1 (415) 665-0052, Access Code: 369-072-375.

Date of Intended Adoption: November 9, 2020.

Submit Written Comments to: Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, email <https://fortress.wa.gov/doh/policyreview>, by October 28, 2020.

Assistance for Persons with Disabilities: Contact Samantha Pskowski, phone 360-789-2358, TTY 711, email samantha.pskowski@sboh.wa.gov, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to incorporate new methods for the final disposition of human remains into existing rules around the handling of human remains. The legislature authorized ESSB 5001 (chapter 432, Laws of 2019) which allows for alkaline hydrolysis and natural organic reduction as allowable methods of final disposition. The proposed rule incorporates these new methods into existing requirements for the handling of human remains and new requirements specific to these methods of disposition to prevent and control health hazards.

Reasons Supporting Proposal: On May 1, 2020, ESSB 5001 went into effect which legalizes two new disposition methods for human remains; alkaline hydrolysis and natural organic reduction. Alkaline hydrolysis is a chemical process which breaks down human remains to bone and liquid components, similar to traditional cremation. The resultant remains are similar to that of traditional cremation. Natural organic reduction is the process of naturally reducing the human body in a contained, accelerated process. Washington, upon enactment of this law, became the first state in the country and first place in the world to authorize this disposition for human remains.

The board's current rules identify requirements for the handling of human remains, requirements for refrigeration and other allowable activities, and specific requirements related to remains following cremation. The current rules do not include alkaline hydrolysis or natural organic reduction as allowable activities. In addition, due to the uniqueness of natural organic reduction and alkaline hydrolysis, the proposed rule incorporates requirements specific to each disposition method.

Based on these reasons, the board is proposing to adopt rules that incorporate alkaline hydrolysis and natural organic reduction into existing rules regarding the handling of human remains.

Statutory Authority for Adoption: RCW 43.20.050 (2) (f).

Statute Being Implemented: RCW 43.20.050 (2)(f); chapter 68.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBOH, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Samantha Pskowski, 101 Israel Road S.E., Tumwater, WA 98504-7990, 360-789-2358; Enforcement: Funeral and Cemetery Board, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1555.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-789-2358, TTY 711, email samantha.pskowski@sboh.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

1. Description of the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The proposed rule incorporates two new methods of disposition for human remains into the board's existing rules for the handling of human remains. Natural organic reduction and alkaline hydrolysis were approved by the legislature during the 2019 regular session in ESSB 5001 as authorized methods for the disposition of human remains. The board's current rule requires updating to include these new methods and address specific health and safety concerns related to each.

The proposed rule updates definitions by including new definitions for alkaline hydrolysis, natural organic reduction, effluent reduction, and reduction facility operator, as well as amending the definition of human remains to incorporate remains after new processes.

The proposed rule seeks to expand the instances when barrier precautions are required by expanding to include when there is potential contact with hazardous chemicals, dust, or other potentially hazardous materials. Currently, these are only required when contact with blood, body fluids, or internal tissue of the deceased is likely. In addition, the proposed rule would require precautions to prevent injuries by chemicals and allow a sewage system approved by the local health officer or department to be used for the disposal of effluent, a byproduct of alkaline hydrolysis.

The proposed rule seeks to make changes to the activities for which an embalmer may delay refrigeration of human remains. This includes adding hydrolyzing and reduction by natural organic reduction as allowable activities. Additionally, the proposed rule removes an allowable activity, viewing for up to one hour for identification, which has caused confusion among the industry and contradicts with another

allowable activity (i.e., viewing for a period of time not to exceed twenty-four hours). The proposed rule also prohibits certain activities when the remains are confirmed or suspected to suffer from defined contagious diseases, including those identified by the local health officer or medical examiner, or have been treated with certain medication within a defined period of time.

The proposed rule incorporates alkaline hydrolysis by creating a new section that outlines requirements for the vessel used in the process. Alkaline hydrolysis can be completed using a vessel with high temperatures and pressure or low temperatures and atmospheric pressure; the proposed rule requires a high temperature vessel to reach a minimum temperature of 250 degrees Fahrenheit for a minimum of thirty minutes. Operators who choose to use low temperature vessels must have documentation that a third-party has conducted a validation study and results prove that the process destroys pathogens, including prions, in both the airspace and water.

In addition to incorporating specific alkaline hydrolysis requirements, the proposed rule also outlines specific requirements for natural organic reduction. Natural organic reduction facilities would be required under the proposed rule to sample the final product of the reduction process according to test methods developed by the United States Composting Council and conduct testing according to a prescribed schedule for fecal coliform or Salmonella, arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc. Facilities would also be required to test for physical contaminants in all instances of natural organic reduction. Facilities would be required under the proposed rule to maintain an annual report of all testing and provide it upon request. Testing would require businesses to obtain third-party testing of reduced human remains or to obtain the equipment and licensure for in-house laboratory services.

The proposed rule also incorporates into requirements for both human remains following alkaline hydrolysis and natural organic reduction, authority for the local registrar to issue a burial-transit permit in addition to issuance of the permit for remains that have been unclaimed for ninety or more days. This change maintains consistency with existing language regulating cremated human remains.

2. Businesses required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds [are].

NAICS Code: 812220

NAICS Business Description: Cemeteries and crematories

of businesses in WA: 72

Minor Cost Threshold = 1% of Average Annual Payroll:
\$2,088.31

Minor Cost Threshold = .3% of Average Annual Receipts: \$2,442.02

NAICS Code: 81221

NAICS Business Description: Funeral homes and funeral services

of businesses in WA: 113

Minor Cost Threshold = 1% of Average Annual Payroll:
\$3,532.16

Minor Cost Threshold = .3% of Average Annual Receipts: \$3,366.12

3. Analysis of the probable cost of compliance, identifying the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Alkaline Hydrolysis: The required test under this proposed rule is estimated to cost between \$16,000 and \$20,000. This requirement has the potential to be an additional cost to either a manufacturer who wants to sell equipment in Washington State or an operator who wants to use a model that has not previously been validated. Under the proposed rule, once validated, the documentation can be used by any other operators using the same low-temperature alkaline hydrolysis vessel model without additional testing requirements. This proposal would require third-party validation and therefore, an operator or manufacturer would not be required to purchase any additional equipment. The cost cited above would cover a third-party validation of the equipment, including equipment, supplies, labor, and professional services. It is not anticipated that this requirement would increase administrative costs, cause businesses to lose sales or revenue.

Natural Organic Reduction: Required testing in the proposed rule includes physical contaminant testing which can be done in conjunction with existing rule through the department of licensing to sift final reduced remains. Therefore, the required test under this proposed rule does not add any additional cost as the cost has been assumed elsewhere. The proposed rule also requires testing of a total of eighty instances of natural organic reduction, including the first twenty followed by twenty-five percent of the monthly instances until the total has been reached for the following metals and other testing parameters: Fecal coliform or Salmonella, arsenic, cadmium, lead, mercury, selenium.

The estimated cost for these tests is \$60 for the fecal coliform, \$175 for the Salmonella test, and \$126 for a combined metals test. Testing requirements would phase out, for purposes of this analysis it is assumed that due to this, facilities would not operate their own testing labs.

The cost of the proposed testing is estimated to be approximately \$186 per sample and therefore, testing on the required schedule is estimated to cost \$12,276.

4. Analysis of whether the proposed rule may impose more than minor costs on businesses in the industry. Currently, there are no alkaline hydrolysis or natural organic reduction facilities in Washington state, however, based on outreach to prospective businesses, at the time of this writing there are anticipated to be one alkaline hydrolysis facility and three natural organic reduction facilities. The prospective alkaline hydrolysis facility has not indicated if the intention is to utilize a high- or low-temperature system. Therefore, for purposes of this analysis we assume they will choose a low-temperature system and be subjected to the costs associated with this rule making.

As calculated above, the cost of complying with the rule making for an alkaline hydrolysis facility who wishes to use a low-temperature system would be between \$16,000 and \$20,000. This cost would be a one-time cost that could be

paid by the system's manufacturer or the facility operator. In addition, this cost would be required for each system once. For example, if Manufacturer A develops and tests System A, then Operator A may use System A and Operator B may utilize System A in Washington state without these costs.

For natural organic reduction facilities, the cost of compliance with rule making is estimated to be \$12,276 for each entity. Facilities would be required to complete testing for eighty instances of natural organic reduction at an estimated cost \$186 per sample.

The potential total cost for an alkaline hydrolysis facility, dependent on their desired equipment is more than 1% of average annual payroll or 0.3% of average annual gross business income for the cemeteries and crematories industry and funeral homes and funeral services industry which have a minor cost estimate of \$2,442.02 and \$3,532.16 respectively.

5. Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule. For alkaline hydrolysis, at the time of this analysis there is only one facility anticipated to open, therefore this assessment cannot be completed.

For natural organic reduction, there is an anticipated three entities that will provide this service, none of which at this time are anticipated to meet the definition of small business (employing fewer than fifty employees). It is not expected that this rule would have a disproportionate impact on small businesses, as each business is expected to complete an identical number of tests for a prescribed list of parameters. Each natural organic reduction facility, regardless of size, is expected to have costs related to this rule making of \$12,276. For lower volume facilities, this cost would be spread out over a longer period of time and higher volume facilities having a greater upfront cost. Based on survey of prospective facility operators, it is estimated that the lowest volume facility would see these costs span over approximately eight years with the highest volume facility having costs spread over approximately three years.

6. If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced, provide a clear explanation of why. The proposed rule does not have a disproportionate impact on small businesses.

7. Description of how small businesses were involved in the development of the proposed rule. At this time, each entity that has been identified as a prospective operator of an alkaline hydrolysis or natural organic reduction facility is categorized as a small business. The board filed the CR-101 in March of 2020, announcing the exploration of rule making related to incorporating alkaline hydrolysis and natural organic reduction into existing rules on the handling of human remains. Since that time, board staff have engaged prospective business owners in Washington state as well as equipment manufacturers out-of-state to understand these new disposition methods and develop rules for the safe handling of remains. The board released for informal comment a draft in August 2020 and received written feedback from a business that has been incorporated into the proposed rule.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. As a result of compliance with the proposed rule, there is no estimated job creation or loss.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-789-2358, TTY 711, email samantha.pskowski@sboh.wa.gov.

September 23, 2020
Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

WAC 246-500-010 Definitions. (1) "Alkaline hydrolysis" or "hydrolysis" means the reduction of human remains to bone fragments and essential elements in a licensed hydrolysis facility using heat, pressure, water, and base chemical agents.

(2) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids, hazardous chemicals, dust, and other potentially hazardous materials.

((2)) (3) "Burial-transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter ((70.58)) 70.58A RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

((3)) (4) "Coroner" means the county official as described under chapter 36.24 RCW and RCW 36.16.030.

((4)) (5) "Department" means the Washington state department of health.

((5)) (6) "Effluent" means the liquid end-product following alkaline hydrolysis. For the purpose of this chapter, this does not meet the definition of human remains.

(7) "Embalmer" means a person defined and licensed under chapter 18.39 RCW.

((6)) (8) "Funeral establishment" means a place of business defined and licensed under chapter 18.39 RCW.

((7)) (9) "Funeral director" means a person defined and licensed under chapter 18.39 RCW.

((8)) (10) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care, including persons credentialed in Washington state under Title 18 RCW and military personnel providing health care within Washington state regardless of licensure.

((9)) (11) "Human remains" or "remains" means the body of a deceased person, in any stage of decomposition, ((and includes cremated human)) including remains following the process of cremation, alkaline hydrolysis, or natural organic reduction, but ((excludes)) not including archaeological ((resources)) skeletal remains under chapter 27.53 RCW.

((10)) (12) "Local health officer" means a licensed physician defined and appointed under RCW 70.05.050.

~~((11))~~ (13) "Local registrar of vital statistics" means the local health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district under chapter ~~((70.58))~~ 70.58A RCW.

~~((12))~~ (14) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

~~((13))~~ (15) "Natural organic reduction" means the contained, accelerated conversion of human remains to soil.

(16) "Reduction" means an accelerated conversion of human remains into bone fragments, essential elements, or soil by cremation, alkaline hydrolysis, or natural organic reduction.

(17) "Reduction facility operator" means the person(s) registered and licensed with the funeral and cemetery board through WAC 308-47-090 to operate a crematory, alkaline hydrolysis equipment, or natural organic reduction facility.

(18) "Refrigerate" means:

(a) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F in a licensed funeral establishment; or

(b) Placing in a mechanically cooled unit maintained at a maximum temperature of 48°F or packing with dry ice or leak-resistant sealed ice packs outside of a funeral establishment.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

WAC 246-500-020 Contact with human remains. (1)

Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains must:

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased or hazardous chemicals, dust, or other potentially hazardous material;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including, when necessary:

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction~~((:))~~.

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, chemicals, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment after contact with human remains, blood, or body fluids;

(i) Provide appropriate means for disposing of body fluids, blood, tissues, and wastes or for retaining them for final disposition with the body~~((:))~~, including:

(i) All autopsy rooms, morgues, preparation rooms, and other places where human remains are handled must be equipped with impervious containers with disposable, impervious liners and tightly fitting closures~~((:))~~;

(ii) Body fluids, blood, tissues, and wastes removed from human remains must be kept with the body or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste~~((:))~~;

(iii) A sewage system approved by the local health officer or the department may be used for the disposal of blood ~~((and))~~, other body fluids~~((:))~~, and effluent; and

(iv) All containers and liners used to receive solid or fluid materials removed from human remains must be cleaned and disinfected immediately after use, interred with the body, or disposed in accordance with local ordinances and other applicable laws and rules for infectious waste.

(2) Persons responsible for transfer or transport of human remains ~~((must))~~ shall clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

WAC 246-500-030 Refrigeration or embalming of human remains. (1)

Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition ~~((must))~~ shall refrigerate or embalm the remains upon receipt.

(2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration upon receipt or remove human remains from refrigeration for the following activities:

(a) Embalming;

(b) Transporting;

(c) Cremating, reducing by alkaline hydrolysis, or burying;

(d) ~~((Viewing for identification for a period of time not to exceed one hour by a person able to identify the deceased;))~~ Reducing by natural organic reduction;

(e) Washing, anointing, clothing, praying over, reading to, singing to, sitting with, guarding, viewing, or otherwise accompanying the deceased for a period of time not to exceed twenty-four hours by persons acting according to the directions of the deceased or the person having the right to control the disposition of the remains under RCW 68.50.160, provided that anyone directly touching the remains uses barrier precautions according to requirements under WAC 246-500-020 (1)(b); or

(f) As otherwise approved by the local health officer after evaluating specific circumstances, the need to protect public health, and recognition of religious beliefs.

(3) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition ~~((must))~~ shall prohibit activities otherwise allowed under subsection (2)(d) of this section if the human remains are

confirmed to have or suspected of having one or more of the following conditions:

(a) Prion disease infection, mycobacterium tuberculosis infection, Ebola virus disease infection;

(b) Contagious disease infection which may be a public health hazard as identified by the local health officer or medical examiner;

(c) A radioactive seed implant within thirty days of death until such time that thirty days have elapsed or the organ containing the seed(s) has been removed;

(d) Containing a nuclear pacemaker until such time that the nuclear pacemaker is removed; or

(e) Perishing as a result of a radiologic incident or accident, unless a written release is provided by the department of health office of radiation protection or other state or federal agency in charge of the response to the radiological incident or accident.

(4) A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition shall prohibit activities otherwise allowed under subsection (2)(e) of this section if informed by a local health officer or medical examiner that such activities would pose a direct threat to human health.

~~((4))~~ (5) Nothing in this section restricts the authority of a coroner or medical examiner when human remains are under his or her jurisdiction in accordance with RCW 68.50.010.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

WAC 246-500-040 Transportation of human remains. (1) A person((s)) who transports human remains ~~((must)) shall:~~

(a) Use effective hygienic measures consistent with handling potentially infectious material; and

(b) Obtain a burial-transit permit from the ~~((local health officer or))~~ local registrar of vital statistics or ~~((file a notice of removal))~~ initiates a report of death with the local registrar where the death occurred according to requirements of RCW ~~((70.58.230))~~ 70.58A.210 prior to transporting human remains from one registration district to another.

(2) Prior to transporting human remains by common carrier, the person((s)) responsible for preparing and handling the remains ~~((must)) shall:~~

(a) Enclose the human remains in a leak-resistant container placed inside another leak-resistant, securely constructed shipping container to prevent the release of all body fluids;

(b) Obtain and enclose the burial-transit permit in a sturdy envelope; and

(c) Attach the burial-transit permit to the shipping container.

(3) The person((s)) responsible for human remains routed to the point of final destination on a burial-transit permit:

(a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and

(b) ~~((Must))~~ Shall surrender the burial-transit permit to the ~~((sexton or crematory official))~~ person in charge of the funeral establishment, reduction facility, or cemetery authority at the point of interment or ~~((cremation))~~ reduction.

~~((Sextons and cremation officials))~~ A person in charge of the funeral establishment, reduction facility, or cemetery authority shall accept the burial-transit permit as authority for interment in a cemetery or for ~~((cremation))~~ reduction within the state of Washington.

AMENDATORY SECTION (Amending WSR 06-17-182, filed 8/23/06, effective 9/23/06)

WAC 246-500-050 ~~((Cremated)) Human remains reduced through cremation.~~ (1) Other than the provisions in this section and WAC 246-500-010, this chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of cremated human remains. The permit for the disposition of cremated remains may be used in connection with the transportation of cremated remains by common carrier or other means.

(3) The local registrar or the department of health may issue a burial-transit permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of cremated remains must be consistent with Washington state laws and rules.

NEW SECTION

WAC 246-500-053 Human remains reduced through alkaline hydrolysis. (1) Other than the provisions in this section and WAC 246-500-010, this chapter does not apply to human remains after alkaline hydrolysis.

(2) A hydrolysis facility must:

(a) Operate a high-temperature purpose built vessel, that reaches a minimum temperature of two hundred fifty degrees Fahrenheit for a minimum of thirty minutes during the reduction process; or

(b) Operate a purpose built vessel, for which third-party validation testing is provided demonstrating the reduction process destroys prions, and achieves sterilization in both the water and airspace, according to the manufacturer's specifications. The testing criteria must include a matrix-assisted laser desorption/ionization time of flight (MALDI-TOF) mass spectrometry peptide sizing analysis and a 6 spore log reduction or greater in the level of *Bacillus* spores. An operator shall retain this documentation on-site and be able to provide it upon request to state or local health officials.

(3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through alkaline hydrolysis. The permit for the disposition of remains reduced through alkaline hydrolysis may be used in connection with the transportation of remains reduced through alkaline hydrolysis by common carrier or other means.

(4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human

remains reduced through alkaline hydrolysis which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of remains reduced through alkaline hydrolysis must be consistent with Washington state laws and rules.

NEW SECTION

WAC 246-500-055 Human remains reduced through natural organic reduction. (1) Other than the provisions of this section and WAC 246-500-010, this chapter does not apply to human remains after natural organic reduction.

(2) A natural organic reduction facility operator shall:

(a) Collect material samples for analysis that are representative of each instance of natural organic reduction using a sampling method such as described in the U.S. Composting Council 2002 Test Methods for the Examination of Composting and Compost, Method 02.01-A through E;

(b) Analyze each instance of reduced human remains for physical contaminants. Reduced remains must have less than 0.01 mg/kg dry weight of physical contaminants which include, but are not limited to, intact bone, dental filings, and medical implants;

(c) Analyze the reduction facility's reduced human remains according to the following schedule:

(i) The reduction facility's initial twenty instances of reduced human remains for the parameters identified in Table 500-A;

(ii) Following twenty reductions meeting limits outlined in Table 500-A, analyze, at minimum, twenty-five percent of a facility's monthly instances of reduced human remains for the parameters identified in Table 500-A until eighty total instances have met the requirements in Table 500-A;

(iii) The local health jurisdiction may require tests for additional parameters under (b) and (c) of this subsection.

(d) Not release any human remains that exceed the limits outlined in Table 500-A; and

(e) Prepare, maintain, and provide upon request by the local health jurisdiction, an annual report each calendar year. The annual report must detail the facility's activities during the previous calendar year and must include the following information:

- (i) Name and address of the facility;
 - (ii) Calendar year covered by the report;
 - (iii) Annual quantity of reduced human remains;
 - (iv) Results of any laboratory analyses of reduced human remains; and
 - (v) Any additional information required by the local health jurisdiction.
- (f)

**Table 500-A
Testing Parameters**

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Fecal coliform	< 1,000 Most probable number per gram of total solids (dry weight)

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
or	
Salmonella	< 3 Most probable number per 4 grams of total solids (dry weight)
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Selenium	≤ 18 ppm

(3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through natural organic reduction. The permit for the disposition of remains reduced through natural organic reduction may be used in connection with the transportation of remains reduced through natural organic reduction by common carrier or other means.

(4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human remains reduced through natural organic reduction which have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more. This permit will specify that the disposition of remains reduced through natural organic reduction must be consistent with Washington state laws and rules.

**WSR 20-19-146
PROPOSED RULES
DEPARTMENT OF HEALTH**
[Filed September 23, 2020, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-100.

Title of Rule and Other Identifying Information: WAC 246-828-025 and 246-828-290, hearing and speech, the department of health (department), in consultation with the board of hearing and speech (board) is proposing amending WAC 246-828-025 and 246-828-290 to implement ESB 5210 (chapter 183, Laws of 2019) addressing consumer notification. The department is also proposing technical changes or changes to improve clarity.

Hearing Location(s): On November 6, 2020, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To access via GoTo Webinar: <https://attendee.gotowebinar.com/register/544356521689990159>. Via computer, tablet or smartphone: <https://attendee.gotowebinar.com/register/544356521689990159>,

webinar ID: 209-115-987. Via phone: United States: +1 (631) 992-3221. Access Code: 989-794-062.

Date of Intended Adoption: November 13, 2020.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 6, 2020.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov, by October 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would define "hearing assistive technologies" and establish consumer notification requirements regarding those technologies prior to the purchase of hearing devices. By requiring patient notification, the legislature intends to increase consumer awareness of benefits and uses of the different types of hearing instruments and their associated technologies, including compatibility with assistive listening systems.

Reasons Supporting Proposal: ESB 5210 (chapter 183, Laws of 2019) requires the department to adopt or amend rules. In addition, in order to be enforceable, the requirements must be in rule. There is no alternative to rule making because the legislation requires the department to adopt rules.

Statutory Authority for Adoption: RCW 18.35.310.

Statute Being Implemented: RCW 18.35.310.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852-7852, Olympia, WA 98507-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule only pertains to providers and does not impact small businesses.

September 23, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 19-13-041, filed 6/12/19, effective 7/13/19)

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. Institutions where education was obtained outside of the United States or Canada has an equivalency determination completed by the board. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices that increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

~~((4))~~ (5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

~~((5))~~ (6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

~~((6))~~ (7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-290 Purchaser rescission rights and right to notice of hearing assistive technologies. In addition to the receipt and disclosure information required by RCW 18.35.030, 18.35.185, 63.14.040 and 63.14.120, every retail agreement for the sale of hearing instruments must contain or have attached the following notice to buyer in twelve point font or larger. The language in part 1 under "Notice to Buyer"

is intended to have the same legal effect as the notices required in RCW 63.14.040(2) and 63.14.120(3) and may be substituted for those notices.

The rights summarized in the "Notice to Buyer" must be made known to the purchaser before the contract is executed. The licensee must provide this "Notice to Buyer" in writing to the purchaser. The purchaser must acknowledge receipt of the "Notice to Buyer" by signing his or her name in the designated space following the "Notice to Buyer."

Notice to Buyer

NOTICE TO BUYER UNDER WASHINGTON STATE LAW
CHAPTER 18.35 RCW

Do not sign this agreement before you read it or if any spaces intended for the agreed terms are blank. You are entitled to receive a copy of this agreement at the time you sign it. The seller's business address must be shown on the agreement.

Section 1 CANCELLATION - WITHIN THREE DAYS

You may cancel this agreement within three days, without explaining your reasons, if the seller solicited it in person and you signed it at a place other than the seller's business address.

To cancel this agreement without explaining your reasons, you must notify the seller in writing that you are canceling the agreement. You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the third business day after you signed this agreement.

Any merchandise you received under this agreement must be in its original condition. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement.

You will incur no additional liability for canceling the agreement.

Section 2 RESCISSION - WITHIN THIRTY DAYS

You may rescind (or terminate) the agreement within thirty days, for reasonable cause. This thirty-day period is called the "rescission period."

To rescind this agreement, you must notify the seller in writing that you are rescinding the agreement for reasonable cause pursuant to RCW 18.35.185(1). (Reasonable cause does not include cosmetic concerns or a mere change of mind.) You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the thirtieth day after delivery of the hearing instrument.

Any merchandise you received under this agreement must be in its original condition, except for normal wear and

tear. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement. However, for each hearing instrument you return, the seller may keep either one hundred fifty dollars or fifteen percent of the total purchase price, whichever is less, plus the price originally charged for custom-made earmolds.

The seller must refund your money and return your traded goods, or have them postmarked and in the mail to you, within ten business days after receiving your notice of rescission.

You will incur no additional liability for rescinding the agreement.

Section 3 EXTENSION OF RESCISSION PERIOD

If you notify the seller within the thirty-day rescission period that your hearing instrument has developed a problem that constitutes reasonable cause to rescind the agreement or that prevents you from evaluating your hearing instrument, the seller must extend the rescission period. The rescission period stops running on the date you notify the seller of the problem and starts running again on the date the seller notifies you that your hearing instrument is ready for redelivery.

You and the seller may agree to a rescission period longer than thirty days.

Whenever the rescission period is extended, the seller must provide you written notice of the last date upon which you may demand a refund and return of traded goods.

Section 4 NOTICE OF HEARING ASSISTIVE TECHNOLOGIES

Prior to initial fitting and purchase you must be informed, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies. Hearing assistive technologies can supplement your hearing aid and increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension. Hearing assistive technology options can allow hearing aids to connect wirelessly and through direct connection to other electronic sound sources and assistive listening systems, compliant with the Americans with Disabilities Act.

I am aware that the hearing instrument(s) referenced in this document include (please select all that apply):

- Telecoil
- Bluetooth
- Other technology (specify) _____

By signing this receipt, you acknowledge that you have been informed of your rescission rights and hearing assistive technologies and that you have read and understand these rights.

Signature of Purchaser	Date
Signature of Seller	Date
Delivery Acknowledgment - Signature of Purchaser	Date

**WSR 20-19-148
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Office of the Secretary)
[Filed September 23, 2020, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-061.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-02-0075 How does a party file documents?

Hearing Location(s): On October 27, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than October 28, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 27, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by October 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-02-0075 in response to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"). The proposed amendment allows electronic filing and electronic distribution of notices and orders to the office of administrative hearings (OAH) via email by striking the email prohibition, adding a provision for email filing with OAH, and adding clarifying language.

Reasons Supporting Proposal: To protect public health, safety, and welfare there is an emergent need to allow electronic filing and electronic distribution of notices and orders to OAH supporting "social distancing" due to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"), and associated state of emergency in all Washington counties as proclaimed by Gov-

ernor Inslee's "Proclamation by the Governor 20-05." OAH has issued "temporary emergency policy and procedures" authorizing electronic filings for DSHS, health care authority, and department of children, youth, and families case-loads, effective March 25, 2020. Instructions for using secure email filing are available at www.oah.wa.gov.

Statutory Authority for Adoption: RCW 43.17.060, 43.20A.550, 34.05.020, 34.05.350.

Statute Being Implemented: Proclamation by the Governor 20-05.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Williams, P.O. Box 45850, Olympia, WA 98504, 360-664-6093.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not considered a significant legislative rule by definition under RCW 34.05.328 (5)(c)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025.

Explanation of exemptions: This rule is a procedural rule and does not impact small businesses or small nonprofits.

September 22, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0075 How does a party file documents?

(1) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission if the party mails a copy of the document the same day;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(2) ~~((A))~~ Any party ((cannot)) may file documents with OAH by secure email. The BOA does not accept electronic submission except by fax.